

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case Nos. 1:13cr278
1:05cr327
Akron, Ohio
Plaintiff, Thursday, June 12, 2014

vs.

JEREMY MACK,
Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE

SENTENCING HEARING

APPEARANCES:

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Court Reporter: Lori Ann Callahan, RMR-CRR
United States District Courthouse
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Akron, Ohio 44308
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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

1 P R O C E E D I N G S

2 - - -

3 THE COURT: Please be seated.

4 Please call the cases.

11:19:24 5 COURTROOM DEPUTY CLERK: The cases before court is
6 Case Number 1:13cr278-01, United States of America versus
7 Jeremy Mack, and 1:05cr327-19, United States of America
8 versus Jeremy Mack.

9 THE COURT: I will ask lead counsel for each party
11:19:50 10 to please identify yourself and your cocounsel and also
11 indicate if you have a client or client representative
12 present and we will begin with lead attorney for the
13 government.

14 MS. BRENNAN: Thank you, Your Honor. Bridget
11:20:05 15 Brennan on behalf of the United States. Seated with me is
16 Assistant United States Attorney Carol Skutnik. And also
17 seated with us are FBI Special Agents Kelly Liberti and Kirk
18 Spielmaker.

19 THE COURT: Good morning.

11:20:20 20 MS. SKUTNIK: Good morning, Your Honor.

21 THE COURT: Mr. Whitney.

22 MR. WHITNEY: Thank you, Judge. I am Lawrence J.
23 Whitney. Here with me is Nathan Ray, my cocounsel, along
24 with Jeremy Mack.

11:20:30 25 THE COURT: Good morning to you, as well.

1 Also with us today are United States Supervising
2 Probation Officer Brian Laffin and United States Probation
3 Officer Henry Serna.

4 PROBATION OFFICER: Good morning, Your Honor.

11:21:14 5 THE COURT: Good morning.

6 So we're really here on two separate matters. One
7 dealing with violations, supervised release violations that
8 were lodged against Mr. Mack, some of which in the end
9 resulted in the charges in the 2013 case for which we're
11:21:47 10 here for sentencing.

11 So what I intend to do is to first address the
12 violation reports, and then depending upon how that hearing
13 proceeds, then to address sentencing in both matters at the
14 same time.

11:22:23 15 So, first of all, there were a number of violation
16 reports filed relative to Mr. Mack's 2005 case.
17 Violation -- and I will just list them by their dates.
18 February 6, 2013, February 22, 2013, March 29, 2013, April
19 9, 2013, April 10, 2013, June 19, 2013, May 22, 2014.

11:23:08 20 So, first of all, Counsel, do you have copies of
21 each of these violation reports and supplemental reports?

22 MS. BRENNAN: We do, Your Honor. Thank you.

23 MR. WHITNEY: We do, Judge, and the court was kind
24 enough this morning to permit us to speak with the defendant
11:23:23 25 about it prior to this, our first time we came into the

1 courtroom, and we did, in fact, go over each report with
2 him.

3 THE COURT: Excellent.

4 So basically the violation report -- the initial
11:23:46 5 one set forth three violations, and then as things unfolded
6 and the -- there ended up being six violations, Mr. Serna?

7 PROBATION OFFICER: Correct.

8 THE COURT: So first of all, Mr. Mack, have you
9 had an opportunity as your attorney just indicated to review
11:24:08 10 the violation reports and supplemental reports?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand the nature of all of
13 the violations alleged in the reports? It started with
14 three and then eventually because of the way the charges
11:24:22 15 came down, in your new case, it ended up into being six
16 violations.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: And I guess I will ask, just for
11:24:32 20 purposes of making a proper record, if government's counsel
21 will set forth the six violations alleged in the violation
22 report.

23 MS. BRENNAN: Certainly, Your Honor. Would you
24 like me to read them, or just do a brief summary of each
11:24:52 25 or --

1 THE COURT: Either way is fine. I suppose --
2 because they are related -- in fact, at the end of the day,
3 most of them are related to the new charges, that resulted
4 in the charge in 2013 case, either way will be fine.

11:25:06 5 MS. BRENNAN: Okay. Your Honor, the first one
6 would be a law violation for Mr. Mack's possession of
7 heroin, aggravated trafficking in drugs and illegal use of
8 food stamps on February 3, 2013. That is an arrest that we
9 know was addressed here during the trial of this matter. He
11:25:25 10 was indicted in Lorain County for trafficking in drugs, an
11 F-4, possession of drugs, an F-4, possession of drugs, an
12 F-5, and drug paraphernalia, an M-4. Ultimately that was
13 dismissed from the instant case.

14 Second violation is possession of a controlled
11:25:41 15 substance. At the time of his arrest on February 3, 2013,
16 he was found to be in possession of 26 baggies containing .2
17 grams of heroin in each. The fact that it was heroin and
18 the amounts of those drugs were set forth in Government's
19 Exhibit 61 during the trial of this case.

11:26:00 20 Violation 3, drug use. February 4, 2013, the
21 defendant provided a urine specimen which tested positive
22 for the use of marijuana. Results were certified on
23 February 13, 2013.

24 The fourth law violation is the arrest of the
11:26:16 25 Lorain County Drug Task Force drug trafficking in heroin

1 stemming from the April 9, 2013 arrest that was also the
2 subject of much testimony during the course of this trial.

3 Number 5 is a law violation. April 9, 2013,
4 arrested by the Lorain County Drug Task Force for compelling
11:26:38 5 prostitution and promoting prostitution, again, related to
6 the instant case.

7 Let's see, the last law violation. May 29, 2013,
8 the federal indictment that is the subject of this case,
9 Your Honor.

11:26:57 10 THE COURT: Thank you.

11 So, Mr. Mack, did you understand each of the
12 alleged violations as set forth in the violation reports and
13 supplemental reports?

14 THE DEFENDANT: I do.

11:27:34 15 THE COURT: Now, Mr. Mack, you are entitled to a
16 hearing to determine if you violated the terms and
17 conditions of your supervised release. The government is
18 required to prove the violations by a preponderance of the
19 evidence. At the hearing you are entitled to present
11:27:51 20 evidence and question any adverse witness unless the court
21 determines that the interest of justice does not require the
22 witness to appear.

23 You have the right to retain counsel or to request
24 that counsel be appointed if you cannot obtain counsel. You
11:28:05 25 will have an opportunity at the hearing to make a statement

1 and present any information in mitigation.

2 If the court finds that you violated the terms of
3 your supervised release, the court has the following
4 sentencing options, and they have been set forth -- the
11:28:23 5 sentencing options have been set forth in the reports and,
6 Counsel, I trust that you have each had an opportunity to
7 review the sentencing options as they relate to the
8 supervised release violations?

9 MR. WHITNEY: We have, Your Honor.

11:28:37 10 MS. BRENNAN: We have, Your Honor.

11 THE COURT: All right. But just to summarize for
12 Mr. Mack, as far as the advisory sentencing guideline
13 calculations as they relate to the supervised release
14 violations, under the policy statements in Chapter 7 of the
11:28:53 15 guidelines, the revocation range of imprisonment is 33 to 41
16 months, and that's based upon the most serious violation,
17 being a grade A violation, and you having a criminal history
18 category of VI.

19 However, there is a statutory maximum term of
11:29:09 20 imprisonment for the offenses of two years. And so the
21 guideline sentence becomes 24 months instead of the previous
22 range I have had indicated.

23 Under the statute, if you -- found to have
24 violated a condition of supervised release, the court may
11:29:41 25 extend the term of supervised release or may modify, reduce

1 or enlarge the conditions or the court may revoke the
2 conditions and impose a term of imprisonment.

3 If the court finds that you have violated a
4 condition of supervised release and decides to impose a term
11:30:04 5 of imprisonment, it may impose a sentence of imprisonment up
6 to the statutory maximum, which I just stated was two years
7 or 24 months, and then the court may reimpose a term of
8 supervised release of up to three years, less any term of
9 imprisonment imposed upon revocation.

11:30:26 10 Revocation of supervised release and a sentence of
11 imprisonment is mandatory if you were found in possession of
12 a controlled substance. There is an exception to that,
13 however, as detailed in the violation reports.

14 So have you fully discussed the sentencing options
11:31:04 15 with your attorneys relative to the supervised release
16 violation?

17 THE DEFENDANT: I have, Your Honor.

18 THE COURT: Have you yourself read all the
19 sentencing options as set forth in the violation reports?

11:31:12 20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. Any sentence that the court
22 imposes for the violations may be ordered to be run
23 concurrent, partially concurrent or consecutive to any
24 sentence that you might receive in the new case.

11:31:25 25 Do you understand that?

1 THE DEFENDANT: I do.

2 THE COURT: Counsel, any objections to the
3 analysis of sentencing options as provided and referenced by
4 the court as they pertain to the supervised release
11:31:35 5 violations?

6 MS. BRENNAN: Not on behalf of the government,
7 Your Honor.

8 MR. WHITNEY: None, Your Honor. Thank you.

9 THE COURT: All right. Now, Mr. Mack, and I will
11:31:42 10 ask your attorney, do you intend to proceed with a hearing
11 relative to the supervised release violations, or do you
12 intend to waive your right to the hearing and admit to the
13 violations?

14 MR. WHITNEY: Judge, we have gone over, as I said,
11:31:53 15 all of the violations with the defendant, as well as the
16 supplemental information reports. He does take issue, I
17 think, with some of the facts as set forth in the
18 supplemental information reports, but I don't think they're
19 -- they're not prohibitive in terms of -- I think he admits
11:32:15 20 to this court that the law violations that have been
21 outlined by this court are, in fact, violations of his
22 status and he does not want a hearing on the matter and we
23 request that the court proceed with disposition.

24 THE COURT: All right. Mr. Mack, based on what
11:32:37 25 your attorney has indicated to the court, is that your --

1 not seeking to have a hearing on the supervised release
2 violations, rather, you are waiving your right to the
3 hearing, and even though you might quibble with some of the
4 descriptions contained in the descriptions of the
11:32:53 5 violations, you are agreeing or you wish to admit to the
6 violations and have the court proceed with sentencing.

7 Is that correct?

8 THE DEFENDANT: That's correct, Your Honor.

9 THE COURT: Anyone force you or coerce you into
11:33:06 10 giving up your right to the hearing?

11 THE DEFENDANT: Not at all.

12 THE COURT: Are you giving up your right to the
13 hearing after you had full opportunity to discuss your right
14 to a hearing with your attorneys?

11:33:17 15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Are you giving up this right to a
17 hearing knowingly and voluntarily, sir?

18 THE DEFENDANT: I am.

19 THE COURT: I'm sorry?

11:33:26 20 THE DEFENDANT: I am, Your Honor.

21 THE COURT: All right. And do you understand that
22 by giving up your right to the hearing and by admitting to
23 the violations, the court will find you guilty, or I'm
24 sorry, the court finds that you have committed the
11:33:39 25 violations, and that you've admitted to the violations and

1 the court will then proceed to impose a sentence?

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: All right. The court finds that

4 Mr. Mack has waived his right to the full evidentiary

11:33:54 5 hearing and that he has further admitted to the violations

6 of the terms of his supervised release and, therefore, the

7 court finds the violations as set forth in the updated

8 supplemental information report as to all six of the

9 violations.

11:34:14 10 We will proceed with sentencing -- on this matter,

11 that is, I'll make reference to it as the 2005 case, at the

12 same time as the court proceeds with sentencing in the 2013

13 case which we will now address.

14 All right. With respect to the 2013 case, that

11:35:00 15 was, of course, 13cr278, Mr. Mack was charged in a

16 nine-count superseding indictment as follows:

17 Count 1, conspiracy to commit sex trafficking or

18 drug trafficking. Counts 2, 3, 4 and 5, which were four

19 separate counts of sex trafficking. Count 6, distribution

11:35:49 20 of a controlled substance, specifically heroin. Count 7,

21 distribution of a controlled substance, specifically

22 cocaine. Count 8, obstruction of justice through witness

23 tampering. And Count 9, obstruction of justice.

24 On February 18, 2014, Mr. Mack was found guilty by

11:36:15 25 a jury of all nine counts contained in the superseding

1 indictment. I will indicate that with respect to Count 3,
2 which is the sex trafficking involving a minor, there were
3 two separate ways or two separate theories the government
4 put forth before the jury, two separate violations of the
11:36:46 5 statute. One was by force, and one dealt with -- by force
6 or coercion and the other dealt with the other part of the
7 statute which was often referred to as a strict liability
8 because knowing the age of the child, or knowing the age of
9 the minor, so two separate portions of the statute.

11:37:18 10 MS. BRENNAN: I don't believe it's necessarily
11 strict liability, Your Honor. I think it's -- there's some
12 reasonable opportunity to view the limits.

13 THE COURT: Exactly. And I shouldn't have -- I
14 short-termed it, and I should not have. I was trying to
11:37:30 15 differentiate between the two and the court does stand
16 corrected.

17 The way that we took a precaution when we actually
18 charged the jury and it wasn't presented to them in that --
19 in a strict liability fashion. They had to make a finding.
11:37:45 20 We did that on purpose so that there would be no questions
21 and so as to avoid an error, any error on that issue, and so
22 it probably is more prudent to stay away from that term now,
23 suffice it to say that the charge was brought against
24 Mr. Mack as it involved a minor on two different bases and
11:38:16 25 the court found Mr. Mack guilty as to both, both as to the

1 force and coercion and as to knowing that Victim Number 2
2 was a minor. That's a better way to say it.

3 So the case is set today for -- the case is set
4 today for sentencing.

11:38:43 5 The court has received and reviewed the final
6 presentence report, the government's sentencing memorandum,
7 the defendant's sentencing memorandum, and two of the
8 victims have also submitted victim impact statements.

9 Mr. Mack, have you received and reviewed copies of
11:39:12 10 all of those -- all of the documents that I've just
11 mentioned, sir?

12 THE DEFENDANT: I've reviewed them with my
13 attorneys.

14 THE COURT: Yes. So you have had an opportunity
11:39:23 15 to review all those documents with your attorney before --

16 THE DEFENDANT: Yes, I have.

17 THE COURT: -- the sentencing? Okay.

18 As set forth in the addendum to the report, the
19 court understands that the government has no unresolved
11:39:38 20 objections to the report and that the defendant does have a
21 number of unresolved objections to the report.

22 I will indicate that there was a prior, if you
23 will, final report submitted and there were some errors that
24 the -- that were discovered and so the report was revised on
11:40:11 25 June 5, and it's docketed at Docket Number 182 and that's

1 the report the court will be working off of. Some of what
2 were unresolved objections have now been resolved in this
3 later version of the report, but we will now consider any
4 outstanding objections that the defendant has to the report.

11:40:39 5 So let's first address the objections as I
6 understand them to exist.

7 MR. RAY: Your Honor, may it please the court.
8 Nathan Ray on behalf of Mr. Mack.

9 Judge, what I would like to start the court with
11:40:57 10 as far as our objections is as it relates to the four-level
11 enhancement for Mr. Mack as being an organizer or leader of
12 criminal activity.

13 THE COURT: Sure. And we will get to that -- let
14 me just try to dispose of some of the other ones first
11:41:13 15 because I think that is one of your main objections.

16 MR. RAY: It is. Thank you.

17 THE COURT: So let's try to sort of resolve some
18 other ones first. Let's look at the objections as they are
19 listed on the report, and one of the objections that you
11:41:27 20 have is that the -- the 2005 case is not a related case as
21 is suggested on page 1 of the report, and the 2005 case is
22 simply a case involving Mr. Mack. And I suppose that can be
23 changed instead of related case. It's just another case
24 involving the defendant, which frankly we need to dispose of
11:42:05 25 relative to the violations.

1 So you're right, it's not related in the sense
2 necessarily that it's a continuing -- a continuation of what
3 occurred in the 2005 case, if that's what you mean.

4 MR. RAY: Correct.

11:42:19 5 THE COURT: So I will just ask the probation
6 department to pick a different term to describe that,
7 perhaps pending case, something to that effect, other
8 pending case.

9 MR. RAY: Correct.

11:42:42 10 THE COURT: And that way it's clear it's not
11 related in the sense that someone could misunderstand the
12 term.

13 PROBATION OFFICER: Your Honor, would it be -- if
14 provisions are going to be made, simple to remove that and
11:42:57 15 say there are none, because that case is listed in his
16 criminal history section.

17 THE COURT: Sure. I don't think -- and maybe
18 that's the easiest way to resolve it. I don't think it's
19 necessary to put it on the cover sheet. It is listed and we
11:43:11 20 are having a hearing on it today and there will be a
21 judgment entry relative to it. So I suppose there's no harm
22 in deleting it from the face sheet other than it might be
23 helpful for someone who's looking at this to know that there
24 are and will be two judgment entries, and that could be a
11:43:35 25 flag.

1 So I guess upon reflection, keep it on there as
2 another pending case involving the defendant, and that way,
3 it will at least trigger and flag for someone that he does
4 have two cases.

11:43:53 5 Is that satisfactory --

6 MR. RAY: Correct.

7 THE COURT: -- to everyone? The government, as
8 well?

9 MS. SKUTNIK: Yes, Your Honor.

11:44:01 10 THE COURT: All right. So that addresses the
11 first objection.

12 So I suppose if I have to come down with a ruling,
13 that objection is sustained and there will be a
14 modification.

11:44:17 15 Next, the second objection relates to the amount
16 of drugs included in the calculation, and I understand your
17 position to be that the amount of drugs proven at trial was
18 less than the amount included in the presentence report.

19 Would you like to address that now?

11:44:48 20 MR. RAY: Very briefly. What the position is that
21 if the court goes back and looks at the trial testimony from
22 Fred Alston, the court will recall that he was the gentleman
23 who was Mr. Mack's brother-in-law, I believe. He came in
24 and he testified that there was 10 grams, 7 grams and 3
11:45:09 25 ounces which he had a transaction with Mr. Mack.

1 It's our position that would be the inclusion of
2 the sale of drugs to be -- that should be calculated in this
3 case for purposes of the amount of drugs sold by Mr. Mack.

4 THE COURT: Very well. Thank you, Mr. Ray.

11:45:25 5 I will ask you to use one of those two microphones
6 at the table just to help the court reporter as we go along.

7 MR. RAY: Okay, Judge.

8 THE COURT: Ms. Brennan?

9 MS. BRENNAN: Sure. Thank you, Your Honor. The
11:45:34 10 government recalls Fred Alston's testimony a bit differently
11 and certainly with respect to the statements he had provided
12 to law enforcement that were produced prior to his
13 testimony. His statement was that when you totalled all of
14 it up, it was 194 grams of cocaine, so we believe that that
11:45:49 15 amount is correct with respect to the cocaine. And if we
16 need to, we can move on to the heroin amounts.

17 THE COURT: Yes. Why don't we do both of these at
18 the same time.

19 MS. BRENNAN: With respect to the heroin, Your
11:46:00 20 Honor, we put this in our sentencing memorandum. This is
21 how we went through it, and we did a very conservative
22 approach because we used Government's Exhibit 63, which was
23 the defendant's cell phone that he obtained on March 3 of
24 2013.

11:46:17 25 And we know that he had been distributing heroin

1 and cocaine since December, actually, November, according to
2 Ashley Onysko, so we know that we are missing several months
3 of his operation. But just looking at Government's Exhibit
4 63, starting with March 3, what we did for four people
11:46:35 5 identified as heroin users, Victim Number 4, Victim Number
6 1, Victim Number 3 and Monica Freedman who testified here as
7 a defense witness, what we did is we took the first time
8 they texted the defendant a debt amount, and then we took
9 line by line through Government's Exhibit 3 and we added up
11:46:57 10 all of the debt increases, and then we took that number,
11 that total dollar number and divided it by 200, and the
12 reason we divided it by 200 is because witnesses testified,
13 specifically Cory Tino, that the defendant's price for one
14 tenth of a gram of heroin was \$20.

11:47:16 15 So taking that number and doing that division, we
16 were able to establish just on those four people that he
17 distributed heroin between March 3, 2013 and April 9, 2013
18 to the amount of 105.41 grams.

19 Now, we know from Government's Exhibit 61, that on
11:47:38 20 February 3, 2013, he also had an additional 2.6 grams of
21 heroin. We also know that as we went through for a Sara
22 Crabtree and Katie Frioud, we did the same analysis between
23 March 31, 2013 and April 9, 2013, they purchased \$1,620
24 worth of heroin which equates to 8.1 grams. We also did an
11:48:04 25 analysis with respect to Carly Hribar. She was between

1 March 19, 2013 and March 30 of 2013. She purchased \$1,217
2 worth of heroin. That equates to 6.085 grams. And with
3 that, if you add in those amounts, and .16 of heroin that
4 Ashley Onysko had on her on April 9, 2013 we know came from
11:48:31 5 the defendant, the total, taking all of that into
6 consideration, would be 121.855 grams of the heroin.

7 Again, I would just reiterate to the court, that's
8 just a very small snapshot. That's one month out of what is
9 about a four-month scheme to distribute heroin and cocaine.

11:48:49 10 THE COURT: And that information is all taken from
11 the exhibits admitted into this trial as the drug debt owed
12 by some of the individuals involved in the case?

13 MS. BRENNAN: Absolutely. Those numbers come
14 strictly from Government's Exhibit 61 and Government's
11:49:07 15 Exhibit 63.

16 THE COURT: All right. I will ask you to
17 reiterate your calculation how you arrived at your
18 calculation relative to the cocaine.

19 MS. BRENNAN: With cocaine, it was based
11:49:17 20 Mr. Alston's testimony here at trial. I recollect it
21 differently from defense counsel, and also the previous
22 statements that he had provided though to law enforcement.
23 He had given another two statements with respect to the
24 defendant, both of which were provided with Jencks, and he
11:49:33 25 indicated that it was 100 -- when you totalled it up, it was

1 194 grams of cocaine that he gave to the defendant, the
2 first time being within a day or two of the defendant being
3 released from the Bureau of Prisons. So it's less than 200
4 grams of cocaine, but more than 100 grams of cocaine as set
11:49:54 5 forth in --

6 THE COURT: And what do you recall his testimony
7 as in this case?

8 MS. BRENNAN: I recalled him talking about --
9 there was more -- there were two three-ounce transactions, I
11:50:05 10 remember that specifically, which I know comes up over this
11 and there was a 10-gram, and I didn't break it down here, I
12 think there was another 10-gram transaction, but there were
13 multiple times.

14 But I -- specifically there was more than just a
11:50:19 15 one three-ounce transaction. He testified that there were
16 two three-ounce transactions. I am conferring with the
17 agent who was with me during the proffer for the amount, so
18 that agent and I both agree that the total amount would be
19 194 grams of cocaine from Fred Alston to the defendant. We
11:50:38 20 don't have any evidence the defendant used the cocaine. In
21 fact, all the evidence is to the contrary. He distributed
22 it.

23 THE COURT: Mr. Ray.

24 MR. RAY: Thank you, Your Honor. I didn't want to
11:50:47 25 interrupt the government's attorney. But I will put on the

1 record now that on behalf of Mr. Mack, we would ask -- and
2 the court can inquire of him if it wants, he would ask we
3 withdraw our objection as it relates to the heroin, to the
4 amount of heroin. My understanding is there's no problem
11:51:07 5 with the amount as set forth in the PSR as it relates to the
6 heroin.

7 THE COURT: I see. So that is what the court will
8 permit you to withdraw. And particularly, based upon the
9 conservative calculation that was provided by the
11:51:19 10 government, the court agrees that those amounts are
11 reflected in those exhibits.

12 MR. RAY: Correct. My only other thought as it
13 relates to the cocaine in this matter, and I will -- I am
14 sure the court is aware that during the course of a trial,
11:51:34 15 everybody hears things differently, so I made my
16 determination on the amount of cocaine that was attributed
17 to the testimony of Mr. Alston based upon what I believe to
18 be Mr. Whitney's cross-examination of him. So that's where
19 I gleaned my thought from.

11:51:50 20 As is set forth in the PSR, they've attributed to
21 400 to 500 grams of cocaine to Mr. -- to this case, and we
22 would suggest that that was too much, and we would refer to
23 the court.

24 THE COURT: They're now for purposes of the
11:52:13 25 hearing suggesting 194.

1 MR. RAY: No, I do understand that.

2 THE COURT: So that there's no objection as to
3 that amount?

4 MR. RAY: No. We will just go back to our
11:52:22 5 original thought, Judge, as far as what Mr. Alston -- was
6 our recollection of the testimony.

7 THE COURT: I see. All right. So you were
8 quibbling with the higher amount, the 400 to 500?

9 MR. RAY: Correct.

11:52:35 10 THE COURT: So if it's modified to reflect the
11 194, that resolves the issue?

12 MR. RAY: I believe it would, Judge, yes.

13 THE COURT: Okay.

14 MS. BRENNAN: I would just point out, Your Honor,
11:52:48 15 just the distribution of the heroin alone gets us to a base
16 offense level of 26 under 2D1.1.

17 THE COURT: Well, the fact of the matter is -- and
18 I am going to make this point as soon as I make a ruling on
19 the objection, the fact of the matter is that the way that
11:53:06 20 the offense level is calculated in this case as to these
21 offences, it does not impact the calculation -- the
22 guidelines calculation, so I want to make that clear.

23 So even though I am hearing this objection, I want
24 to make it perfectly clear for anyone who's reviewing this
11:53:26 25 matter that whatever the calculation is as to the drugs, it

1 does not -- because the way the offenses are grouped, it
2 will not impact the guideline sentence.

3 MR. WHITNEY: Your Honor, we will agree with that,
4 but just so the record is also clear, the reason why we make
11:53:47 5 objections, not only on his case or but on other cases,
6 these presentences have impact on his housing, on his -- as
7 you know.

8 THE COURT: Absolutely legitimate. And that's why
9 I am allowing the objection to come in. That's why we're
11:54:03 10 discussing it. But I want to make it clear for sentencing
11 purposes and guideline purposes, this is not going to have
12 an impact.

13 So, yes, there are many purposes for which the
14 presentence report is used, and that's why I am taking all
11:54:14 15 this time to make sure that the wording is correct and
16 accurate, and so I will ask probation to go ahead and modify
17 it based upon the agreement now of counsel for the 194 grams
18 of cocaine, the amount of heroin is as it stands. And none
19 of this will change the calculation in the report as it
11:54:35 20 pertains to the drugs, number one. And number two, the drug
21 calculation in the report does not impact the guideline
22 sentence.

23 Everyone agreed?

24 MR. RAY: Yes, Your Honor.

11:54:49 25 MR. WHITNEY: Yes.

1 THE COURT: So that objection is resolved.

2 Now, since it's -- since the -- the next report or
3 the next objection in the report deals with paragraph 51 of
4 the report, let's see, sometimes these numbers change, and
11:55:25 5 you're objecting to the information contained in paragraph
6 21 because Mr. Mack is indicating that he did not -- it's
7 his position that he did not instruct his son, Toby, to lie
8 to the grand jury, but paragraph 51 in the report --

9 MR. RAY: Your Honor, I think you had referred to
11:55:54 10 paragraph 21. I believe it's 51.

11 THE COURT: No, 51. I hope it didn't come out as
12 21. If I said 21, the court meant to say 51.

13 MR. RAY: As it relates to any argument as to this
14 objection, I believe it was set forth in our objections, as
11:56:12 15 well as our motion, our sentencing memorandum, our position,
16 and we would simply ask the court to make a determination
17 based upon what you feel is the right decision in this case.

18 THE COURT: All right. Ms. Brennan.

19 MS. BRENNAN: Your Honor, I mean he was found
11:56:34 20 guilty of this count, and it was clear from the testimony
21 and the court got to hear the call. He told his son Toby to
22 go into the grand jury and to "Stick with the script," and
23 "To tell them you don't know what I was doing," which we've
24 got the text messages and we've referenced one of those in
11:56:50 25 our sentencing memorandum. The court got to hear from

1 Ashley Onysko and others who were in the house. Toby Lewis
2 knew exactly what his dad was doing. He knows it because he
3 is using his son to help him with his sex trafficking and
4 drug trafficking enterprise, so that is an absolute accurate
11:57:06 5 statement. It's consistent with the testimony that came
6 here in trial, and it's consistent with the jury's verdict,
7 Your Honor.

8 THE COURT: All right. Anything further on the
9 issue, Mr. Ray?

11:57:13 10 MR. RAY: On behalf of Mr. Mack, he appreciates
11 the fact that he was convicted of this count, Judge. It
12 simply remains his position that he did not request that his
13 son lie to the jury. Thank you.

14 THE COURT: Very well. The court is going to
11:57:24 15 overrule the objection. The recording and the testimony
16 really do speak for themselves here and perhaps even more so
17 the jury's verdict sort of puts this issue to rest, as well.

18 So next, I think, Mr. Ray, we finally get to the
19 argument you would like to address.

11:57:57 20 MR. RAY: Okay.

21 THE COURT: And that's with respect to the
22 four-level upward adjustment in the role in the offense.

23 MR. RAY: Thank you, Your Honor. May it please
24 the court. Specifically we're looking at United States
11:58:11 25 Sentencing Guideline 3B1.1 where it says, "If a defendant

1 was an organizer or leader of a criminal activity that
2 involved five or more participants or was otherwise
3 extensive, increase by four levels."

4 If you look at the notes specifically application
11:58:29 5 note 1 to 3B1.1, Judge, it defines participant. Participant
6 specifically is a person who is criminally responsible for
7 the commission of the offense, but need not have been
8 convicted.

9 THE COURT: Yes.

11:58:43 10 MR. RAY: In this case, Your Honor, early on, the
11 government identified the individuals who were going to be
12 testifying in this case, specifically who were in the
13 indictment as victims. They never referred to them as
14 criminal responsibility. There was a clear position of the
11:59:03 15 government that they were not going to be charging these
16 individuals. Rather, they saw them as throughout this
17 entire trial as being victims.

18 I think that under this note, that you have to
19 look at specifically, and I believe that if you do, the
11:59:21 20 young ladies are not participants in this case, but they're
21 victims, and if you look at the note, I don't think you can
22 correlate the two.

23 In the government's memorandum, they look at other
24 individuals that they believe could possibly qualify as a
11:59:36 25 participant. And if you look at a number of the individuals

1 that they've mentioned, specifically they talk about
2 Ms. Hribar, Ms. Crabtree, Ms. Freedman and Ms. Frioud, and
3 they talk about the facts that those individuals purchased
4 drugs from Mr. Mack.

11:59:59 5 If you look at the notes, specifically, if you
6 look at comment note 3 to the guidelines, it specifically
7 talks about the buyer/seller relationship, and in that
8 section, it says that "A defendant who has sold a controlled
9 substance to another in an arms-length transaction has not
12:00:20 10 organized or led the buyer and thus 3B1.1 adjustment is not
11 warranted."

12 So I don't think in this situation, Judge --

13 THE COURT: Well, except you're limiting it to the
14 buying of the drugs, but the testimony of these individuals
12:00:40 15 identified by the government in the government's memorandum
16 goes beyond just simply purchasing drugs. It goes into
17 actually transporting the victims to appointments or
18 transporting, in some instances, the minor victim to her
19 home or picking her up from her home, and also, I think one
12:01:04 20 of the witnesses was sort of looking out for your client, as
21 well, and reporting things back to him that she might have
22 heard others say or heard on the streets to try to keep him
23 -- protect him or keep him out of danger as he operated his
24 organization.

12:01:24 25 So they're pointing to more -- the government

1 points to more testimony than just the isolated, "Oh, and by
2 the way, we purchased drugs from Mr. Mack."

3 MR. RAY: I agree. I mean, in their brief, they
4 do talk about more than that.

12:01:41 5 THE COURT: That was, in fact, the testimony.

6 MR. RAY: It was, that there was a purchase of
7 drugs.

8 THE COURT: No. That there was a purchase of
9 drugs and also this other participation in the organization
10 and assisting the organization.

11 MR. RAY: I agree, and there was this testimony.
12 The question is, is whether or not under 3B1.1, if you look
13 at the definition of participant, whether or not any of
14 these other individuals who's criminally responsible, and
15 that's what the note keeps going back to, and participant is
16 whether a person is criminally responsible for what the
17 actions --

18 THE COURT: I see what you're saying.

19 MR. RAY: So you have the criminal conduct of
12:02:15 20 these arms-length transactions for the sale of drugs. My
21 understanding of the notes in the case law is that in and of
22 itself does not create the criminal liability. So you have
23 to then take a second step. Is the actions of driving
24 individuals to these appointments, is that a criminal action
12:02:34 25 that would -- does that create criminal liability that would

1 justify a finding under the 3B1.1 that these are indeed
2 participants? And it is the position of Mr. Mack and the
3 defense is that these do not qualify as participants. So
4 there's not a four-level enhancement that would apply in
12:02:54 5 this case, and we would suggest to the court that that's an
6 inappropriate application.

7 THE COURT: Thank you.

8 MR. RAY: Thank you.

9 MS. BRENNAN: Thank you, Your Honor. The
12:03:00 10 government stands by its sentencing memorandum on this
11 issue. The court is correct in noting that we identified
12 six individuals in our sentencing memorandum as people that
13 are participants. They don't have to be criminally charged,
14 but they have to facilitate and participate in criminal
12:03:16 15 conduct.

16 With respect to Ashley Onysko and Toby Lewis,
17 there doesn't appear to be any question there. The
18 challenge appears to be on Carly Hribar, Sara Crabtree and
19 Monica Freedman and Katie Frioud. For each of those
12:03:29 20 individuals, in addition to purchasing drugs from this
21 defendant, they did other things to knowingly participate
22 and facilitate in his conduct. With respect to Carly
23 Hribar, she drove Victim Number 2, a minor, to the hotel,
24 the Camelot Motel, and sat outside and waited for that
12:03:46 25 commercial sex act to be over and knowingly drove her back

1 to 8 Tattersal. She was here. We asked for a sidebar
2 during the trial. We had never had an opportunity to speak
3 with her to make sure she understood that she was a
4 participant in criminal conduct and she was advised, as we
12:04:03 5 understand it, of her Fifth Amendment right, which we
6 believe she invoked.

7 With respect to Sara Crabtree, she purchased
8 drugs. She also would advise him when people -- she
9 believed people might snitch on him and then she facilitated
12:04:17 10 him in identifying the rates of motels and hotels, and there
11 is even Government's Exhibit 25-40, which was a snapshot
12 of -- it's a two-page document. On the left side of that
13 photograph are hotels and motel information with hourly
14 rates and longer-term rates. At the bottom of that, she has
12:04:36 15 actually signed the document, Sara Crabtree, and she put
16 2013 and there's even a little drawing I think of two girls
17 around a heart.

18 The second page in that picture is also a listing
19 of the -- I think it's the Foxy Yahoo account that was used
12:04:53 20 to place Backpage ads and the password with that account.
21 So the E-mail addresses that were used to post these ads,
22 that's listed out in the -- or the second piece of paper in
23 that photograph.

24 With respect to Monica Freedman, she testified in
12:05:08 25 addition to buying drugs from him, she also drove people

1 back and forth to appointments to engage in commercial sex
2 acts at his direction.

3 In fact, with respect to Victim Number 4, she
4 drove Victim Number 4 back to Tattersal Court while Victim
12:05:23 5 Number 4 cried and said how afraid she was to go back to the
6 defendant.

7 With respect to Katie Frioud, we had Government's
8 Exhibits 31-1 to 31-5. It was a Backpage ad for Victim
9 Number 4, and in that one, and Ms. Frioud testified to it,
12:05:39 10 she knowingly gave the defendant her prepaid -- I will call
11 it a debit card, her prepaid debit card number so that he
12 could use that to place Backpage ads for Victim Number 4 to
13 engage in commercial sex acts.

14 Your Honor, the evidence at trial supports that
12:05:54 15 these four individuals were more than just people who
16 purchased drugs from the defendant. They participated in
17 the crime. That amounts to six participants, one more than
18 the actual five required by 3B1.1. We would ask the court
19 to impose the four-level enhancement, Your Honor.

12:06:13 20 THE COURT: Mr. Ray.

21 MR. RAY: Your Honor, I would agree with the
22 government that you don't have to be charged with a crime in
23 order to be a participant, but in order to be a participant,
24 you specifically have to have criminal liability. You have
12:06:27 25 to be what they call criminally responsible for the

1 commission of the offense.

2 So in other words, is the fact that someone drove
3 this victim who is not included -- is not going to be
4 charged in this case, is the fact that someone drove that
12:06:43 5 person to a hotel room, is that a criminal responsibility
6 that would make them a participant for the four-level
7 enhancement? And it remains our position that it does
8 not -- the individuals they've listed here do not rise to
9 the level of a participant as set forth in the guidelines.

12:07:03 10 Specifically, we refer the court to note 1 of the
11 application notes where it defines participants. The
12 actions of the individuals that the AUSA has discussed here
13 simply do not rise to criminal responsibility that would
14 make them a participant, and we would ask the court find
12:07:25 15 that the four-level enhancement does not apply.

16 THE COURT: Ms. Brennan, if you could address the
17 defendant's argument relative to application note 1, in
18 particular.

19 MS. BRENNAN: Your Honor, I would just cite the
12:07:40 20 court to United States versus Anthony, it's a Sixth Circuit
21 case from 2002, participants are people who were, one, aware
22 of the criminal objective, and two, knowingly offered their
23 assistance. We have that with respect to the four that I've
24 specifically discussed here in court today. They all knew
12:07:57 25 exactly what he was doing with respect to the drug

1 trafficking enterprise and the sex trafficking enterprise.
2 They were all knowing participants, fully aware of the
3 objective, getting these victims back and forth to hotel
4 rooms and returning them to this defendant crying because
12:08:12 5 they did not want to go back to him. That would be Monica
6 Freedman.

7 Carly Hribar, she took a -- you got to see Victim
8 Number 2. She took that girl, that 16-year-old girl to a
9 motel so that she could engage in a commercial sex act at
12:08:29 10 6:00 in the morning. She sat outside and waited for her to
11 be done and drove her back to his house.

12 Your Honor, these four women that we've
13 identified -- I'm sorry?

14 Any one of them could have been charged. In fact,
12:08:48 15 we took it upon ourselves with respect to Ms. Hribar to say
16 that she needed to be advised of her Fifth Amendment right.
17 Any one of them could have been charged under 371, under an
18 aiding and abetting theory. Certainly with respect to
19 Hribar, she could have had only 1591 charge with respect to
12:09:06 20 taking that minor to the Camelot Motel. We believe the
21 four-level enhancement is certainly appropriate here.

22 MR. WHITNEY: May I add something, Your Honor?

23 THE COURT: You certainly may.

24 MR. WHITNEY: The U.S. Attorney's Office for this
12:09:18 25 district took a stand early on in this case, a public stand,

1 that these people are victims. Although they participated
2 in criminal acts, they're victims and not to be treated --
3 "Victims of crime will be treated accordingly," a public
4 statement that the U.S. Attorney's Office made early on in
12:09:40 5 this case.

6 THE COURT: Are you perhaps confusing that with
7 the four victims identified in the indictment?

8 MR. WHITNEY: They are. They could have indicted
9 those people. They didn't indict those people because they
12:09:53 10 treat them as victims, not as participants.

11 THE COURT: So all right. And I appreciate your
12 point, but they're not even including the four victims in
13 the count.

14 MR. WHITNEY: They're not. I am moving on to
12:10:04 15 Carly Hribar and the others.

16 THE COURT: I see.

17 MR. WHITNEY: Who could have been indicted and
18 they just admitted they could have indicted there. But they
19 didn't indict these girls because their office took the
12:10:13 20 position that they're not criminally responsible, they are
21 victims. And, therefore, that's our point, is how do you
22 define the word "participant"? I think it's extremely gray
23 here. And they have decided that they are not criminally
24 responsible.

12:10:32 25 THE COURT: And I do appreciate the argument that

1 you're making; however, they weren't identified in the
2 indictment as victims, either, so they didn't -- they didn't
3 identify them as victims.

4 MR. WHITNEY: But we know they weren't criminally
12:10:44 5 responsible because they're not named in the indictment,
6 period. The government took that position.

7 THE COURT: Well, I believe that it does not
8 require to be a participant under this aggravating role
9 enhancement. There's no requirement that they be charged.

10 12:11:08 MR. WHITNEY: Agreed. So that's not necessary.

11 THE COURT: They could have been charged. The
12 strength of the case makes no difference on whether, you
13 know, they were charged or not charged, but they certainly
14 weren't identified as victims --

15 12:11:25 MR. WHITNEY: They weren't, but -- well, I don't
16 know how --

17 THE COURT: -- in the indictment, in the
18 superseding indictment.

19 MR. WHITNEY: Right. But they --

20 12:11:35 THE COURT: We have four victims in the
21 superseding indictment.

22 MR. WHITNEY: And I think the evidence is clear
23 that they were treated as not being criminally responsible,
24 because they weren't indicted, except for when we're talking
12:11:45 25 about enhancing this man for four levels. Now they're

1 somehow criminally responsible for that purpose because the
2 statute guideline requires it. That's our problem.

3 MS. BRENNAN: Your Honor, these women are not
4 victims. We have never ever identified these women as
12:12:02 5 victims. In fact, the court had an opportunity to see us
6 cross-examine some of these women. They're not victims.

7 And the superseding indictment, Count 1, the 371
8 count even says -- it identifies the defendant and Ashley
9 Onysko and others, known and unknown to the grand jury. Had
12:12:17 10 we wanted to, we could have added any one of these women in
11 there as a 371 defendant.

12 THE COURT: Thank you. Mr. Laffin?

13 PROBATION OFFICER: Yes, the Guideline 3B1.1(a) is
14 two prongs. It involves five or more participants or was
12:12:36 15 otherwise extensive.

16 THE COURT: Right. I think right now -- and I
17 appreciate that there are two ways to get to the
18 enhancement. I think if I understand the government's
19 position, they're saying the court doesn't even have to do
12:12:48 20 the otherwise extensive prong, if you will, or add anew to
21 the enhancement, because it is satisfied by involvement of
22 five or more participants.

23 You also argue in your briefing that you could get
24 to the extensive -- otherwise extensive prong just because
12:13:12 25 of the nature of the operation. So you do, I believe, make

1 that argument alternatively because you set forth the test
2 in your brief; yes?

3 MS. BRENNAN: I do, Your Honor. I set it out in
4 the first paragraph under subsection A.

12:13:31 5 THE COURT: Yes. So there are two ways, and I
6 was -- what we were doing for the purposes of this argument
7 was focusing on the five or more participants.

8 Interestingly enough, in the court's research on
9 this issue, the Sixth Circuit has said that, first of all,
12:13:49 10 in order to qualify for the four-level enhancement under
11 3B1.1(a), a defendant need not directly supervise five or
12 more participants. It's enough that he directly supervised
13 one participant in criminal activity that involved five or
14 more participants and that's United States versus
12:14:11 15 Morales-Martinez, which is a 2013 case, where the court
16 said, "A defendant whose sentence is enhanced under 3B1.1(a)
17 or (b) need not directly supervise more than five persons so
18 long as the defendant exerted some level of control or
19 influence over at least one of five or more persons involved
12:14:35 20 in the criminal activity."

21 So what the court finds, first of all, Mr. Mack
22 was involved in the operation; Ms. Onysko was involved in
23 the operation; Mr. Lewis, Mr. Mack's son, Toby Lewis, was
24 involved in the operation and I don't think anyone, anyone
12:15:01 25 here is disputing that, correct?

1 MS. BRENNAN: The government certainly is not,
2 Your Honor.

3 THE COURT: So I hear no dispute coming, because
4 there were no arguments relative to those three individuals.

12:15:13 5 MR. RAY: Your Honor, I would agree with that
6 based upon the evidence. We would not disagree.

7 THE COURT: So the court has heard the testimony
8 as to the involvement of the others mentioned, Sara
9 Crabtree, Monica Freedman, Katie Frioud, Carly Hribar, and
12:15:31 10 they did participate. They did provide valuable service to
11 the operation when Ms. Onysko was unable to transport others
12 or were unable to transport the victims to their
13 appointments, they transported them to the appointments.

14 They also, as the government pointed out,
12:15:55 15 permitted Mr. Mack to use in Katie Frioud's case, her debit
16 card -- I believe they were debit cards, or some sort of
17 credit, credit card or debit card to make payments. The
18 government's also set forth very nicely in the briefing
19 other acts that these four individuals performed as a
12:16:28 20 participant in the organization, and there was a point where
21 Ms. Hribar was notified of her rights and I believe chose
22 not to testify in this case after she was -- I think she was
23 already on the stand when she was advised.

24 So each of them performed acts that advanced the
12:17:05 25 criminal activity of the organization, and just with respect

1 to those four individuals and the three others, Mr. Mack,
2 Ms. Onysko, and Mr. Lewis, you've met the five or more
3 participants.

4 Additionally and separately, there is an argument
12:17:32 5 to be made that the victims, too, were participants, but we
6 don't even have to get there. We don't even have to get to
7 that argument, because we already meet the required number.
8 There was, just by way of making this point, there was a
9 case where the government argued for the enhancement under
12:18:00 10 3B1.1(c), this is out of the Seventh Circuit, based entirely
11 on victim involvement and relying upon a Sixth Circuit
12 decision in United States versus Carroll, that court said
13 no, you can't just rely solely on the victims, but the
14 criminal activity must be with at least one other criminally
12:18:25 15 culpable person.

16 Here we have more than one other criminally
17 culpable person when you look at Ms. Onysko and Mr. Lewis
18 alone. So that there might even be a viable argument that
19 the victims should also be counted in the number, all to say
12:18:46 20 that without -- without even having to get to the otherwise
21 extensive argument or avenue to this enhancement, the court
22 finds that the enhancement applies based upon the five or
23 more participants -- organizer or leader of criminal
24 activity that involved five or more participants. So with
12:19:09 25 that, the objection is overruled.

1 I should say for purposes of the record because
2 Sixth Circuit law does require the court to identify other
3 participants that have been identified here and Mr. Mack,
4 Ms. Onysko, Mr. Lewis, Ms. Crabtree, Ms. Freedman,
12:19:32 5 Ms. Frioud, Ms. Hribar, and then over and above that, the
6 four victims. And in the sentencing memorandum, there's a
7 detailed report.

8 Excuse me one moment.

9 (Pause.)

12:20:09 10 THE COURT: So in any event, no matter how you
11 look at it, the five participants are met with the six
12 individuals that were set forth in the government's
13 sentencing memorandum.

14 Anything further on that issue?

12:20:32 15 MS. BRENNAN: No. Thank you, Your Honor.

16 MR. RAY: No. Thank you, Judge.

17 THE COURT: I'm sorry, it's actually seven
18 individuals. I can't even -- it's Mr. Mack, Ms. Onysko, Mr.
19 Lewis, Ms. Crabtree, Ms. Freedman, Ms. Frioud and Ms.
12:20:43 20 Hribar, seven individuals.

21 Next objection -- and I will say this: Even if
22 the four-level increase doesn't apply pursuant to Section
23 3B1.1, the offense level is a 48. So even if the court did
24 not apply a four-level increase pursuant to Section 3B1.1,
12:21:31 25 it's still a level -- offense level 44, which is still

1 greater than the highest offense level in the sentencing
2 table, so I want to make that point clear.

3 Next objection deals with the two-level upward
4 adjustment for obstruction of justice. Now, when this
12:22:00 5 objection was originally lodged, there was a different
6 calculation set forth by the probation department in the
7 prior presentence report. When the report was updated on
8 June 5, that same -- there was a different calculation
9 employed and there was a separate calculation for the

12:22:33 10 obstruction. So I'm not sure if their objection even stands
11 today.

12 So I will ask Mr. -- you understand what I am
13 saying? They're using a different formula when they revised
14 the report.

12:22:46 15 MR. RAY: Judge, I understand what they did when
16 they revised the report. I guess we would remain in our
17 position that since he has been convicted of Counts 8 and 9,
18 that no matter how they wanted to revise the reports, the
19 two-level enhancement still should not apply since he has
12:23:03 20 been convicted of Counts 8 and 9, which are the obstruction
21 counts. Rather than count them as a group, they simply
22 eliminated that and then included the two-level enhancement,
23 and we would object to that being done that way.

24 THE COURT: Ms. Brennan?

12:23:27 25 MS. BRENNAN: Your Honor, we have reviewed this

1 and certainly reviewed the change. The way probation has
2 done it in this report is consistent with 3C1.1 and
3 specifically its application note 8. So this -- the way
4 they have calculated it here is correct. They have added
12:23:41 5 the two levels on to the underlying offenses for which the
6 obstruction involved, and he's not getting hit with any
7 additional levels for the separate counts of conviction
8 under 8 and 9.

9 So under application note 8 in 3C1.1, this is
12:23:57 10 pretty standard, Your Honor.

11 THE COURT: Mr. Ray?

12 MR. RAY: Nothing further, Judge. Thank you.

13 THE COURT: I believe that the calculation is
14 performed properly, applied properly pursuant to the
12:24:18 15 Guideline 3C1.1, as well as the government mentioned comment
16 8, so the court overrules that objection.

17 And I believe we've now addressed all the
18 objections that were set forth by the defendant.

19 MR. RAY: That is correct, Your Honor.

12:25:39 20 THE COURT: I just -- because I want to clarify
21 the record since we've spent so much time going over these
22 objections, in the objection dealing with 3B1.1(a), I made a
23 reference to a Seventh Circuit case, I didn't even cite the
24 name of the case, and as I look back at the 3B1.1(c), that
12:25:59 25 was dealing with the lowest level of enhancement and that's

1 why it was only a need to have one other criminally culpable
2 person.

3 So I'm going to back off of my statement relative
4 to the victims completely in this case and just rely upon
12:26:20 5 solely, solely, the seven individuals I previously
6 identified in the record so as to alleviate any potential
7 confusion or error. So it's just Mr. Mack, Ms. Onysko,
8 Mr. Lewis, Ms. Crabtree, Ms. Freedman, Ms. Frioud,
9 Ms. Hribar and that's it. All right? Taking the other
12:26:47 10 piece off the table.

11 Anything further now? Any other objections,
12 corrections, deletions, amendments, whatsoever to the
13 presentence report as it now stands based upon the court's
14 rulings?

12:27:01 15 MS. BRENNAN: No, Your Honor. Thank you.

16 MR. RAY: No, Your Honor. Thank you.

17 THE COURT: All right. So next we will advise --
18 or proceed to review the sentencing options beginning with
19 the advisory sentencing guideline calculation.

12:27:17 20 Now, once, again, there has been a complete
21 revision of the presentence report as of June 5 with a new
22 series of calculations and there are groupings involved in
23 these calculations and there are actually five groups.
24 Counts 1 and 2 are grouped together as group 1; Count 3,
12:27:50 25 group 2; Count 4, group 3; Count 5 is grouped separately as

1 group 4. And finally, Counts 1, 6 and 7 are grouped
2 together and designated as group 5. So we have five
3 different groupings.

4 The calculations that the court will use are
12:28:15 5 accurately now set forth in this version of the report. And
6 I will ask counsel if you have had adequate time now to
7 review the offense level computations as set forth in the
8 presentence report filed on June 5, 2014 to understand the
9 calculations that the court will employ in this case?

12:28:42 10 MS. BRENNAN: We have, Your Honor. Thank you.

11 MR. WHITNEY: We have, too, Judge.

12 THE COURT: Okay.

13 MR. WHITNEY: Other than our objections we already
14 made to the other --

12:28:52 15 THE COURT: Right. To the enhancements.

16 MR. WHITNEY: Correct.

17 THE COURT: The court has made its ruling, and so
18 based upon the court's ruling now, this is, in fact, the
19 formula the court will be using to arrive at the offense
12:29:11 20 level in this case.

21 So the court is simply -- because it's so complex
22 and because they're written out here in paragraphs 56
23 through 96 of the report, the court is simply going to adopt
24 the calculations as contained in the presentence report and
12:29:35 25 ask counsel if you have any questions as to how the combined

1 adjusted offense level of 48 was reached and then because
2 obviously the offense level can't be higher than 43, it is
3 then capped off at 43.

4 Any objection or -- let me say, is there any
12:29:57 5 misunderstanding as to how this calculation works or any
6 question as to how the question works and what the court is
7 adopting as its own calculation of the offense level in this
8 case?

9 MS. BRENNAN: The government has no questions and
12:30:12 10 completely understands the calculation.

11 MR. WHITNEY: Likewise, Your Honor.

12 THE COURT: Okay. So next I would just like to
13 note for the record that Mr. Mack has previously been
14 convicted of the following felonies as referenced in the
12:30:37 15 report: Drug trafficking, I am hoping that it remains the
16 same paragraph number, 110. Let me see. It did not, of
17 course.

18 So it's drug trafficking, which is now paragraph
19 111 in the report. Also another drug trafficking count
12:31:16 20 reflected in 114; trafficking in cocaine reflected at 116;
21 conspiracy to possess with intent to distribute cocaine
22 reflected in paragraph 119. Since Mr. Mack was 18 years or
23 older at the time the instant offenses were committed and
24 the instant offenses involved controlled substances and
12:31:48 25 crimes of violence, Mr. Mack qualifies as a career offender

1 within the meaning of Guideline 4B1.1, which would typically
2 mean in most cases that his offense level would be higher
3 except in this case, it's not the case. So even he
4 qualifies as a career offender, his offense level is higher
12:32:15 5 just based upon application of other guidelines in this
6 case. So I just want to make it clear that he does qualify
7 as a career offender, but it has no impact on his offense
8 level in this case.

9 Any questions about that?

12:32:32 10 MS. BRENNAN: No, Your Honor.

11 MR. WHITNEY: No, Your Honor. Thank you.

12 THE COURT: So next, Mr. Mack's criminal history
13 computation. It's discussed at paragraphs 98 through 126 of
14 the report. His criminal conviction produce a criminal
12:32:57 15 history score of 15. Because Mr. Mack committed the instant
16 offense while under a criminal justice sentence in his 2005
17 case from this district, two points are added, making the
18 total criminal history score 17, which corresponds to a
19 criminal history category of VI. The advisory guideline
12:33:19 20 sentence of an offense level 43 and a criminal history
21 category of VI is life.

22 I will note that the maximum statutory sentence
23 for Count 1 is 60 months. The maximum statutory sentence
24 for each of Counts 2 through 5 is life and the maximum
12:33:40 25 statutory sentence for each of Counts 6 through 9 is 240

1 months.

2 So with that, is there any objection to the
3 court's calculation of the advisory sentencing guideline in
4 this case, which, again, is life?

12:34:01 5 MS. BRENNAN: No, Your Honor.

6 MR. WHITNEY: Again, without waiving the
7 objections we had which led to the court's rulings here, we
8 would agree.

9 THE COURT: Okay. As I said before, even if the
12:34:14 10 court did not apply the four-level -- the four levels for
11 the organizer as a role in the offense, it would still be
12 life. Now, if the court didn't apply either of those two
13 that you're objecting to, it's four and the two-level
14 enhancement for obstruction then, of course, that would make
12:34:40 15 it 360 to life and let me just say at this point, I've
16 already overruled those objections. The one makes no
17 difference, and it's only if both objections would have been
18 sustained that it would have made a difference.

19 So with that, any questions regarding those
12:34:59 20 issues?

21 Now, the remainder of the sentencing options are
22 once again set forth in detail in the report, and the court
23 is simply going to adopt the remainder of the report noting
24 that there is a special assessment of \$900, which is
12:35:17 25 mandatory, but all the other sentencing options are set

1 forth in the report. I've already indicated the maximum
2 statutory sentence for each of the counts. There are also
3 minimums involving Counts 2 through 5 of 15 years.

4 And with that, any objection to the court's
12:35:40 5 analysis of sentencing options as recited and adopted?

6 MS. BRENNAN: No, Your Honor.

7 MR. WHITNEY: No, Your Honor.

8 THE COURT: Okay. So now we get to the point
9 where I get to hear the allocution, parties' arguments, and
12:35:57 10 I will ask Ms. Brennan if there's anything you wish to say
11 on behalf of the government relative to Mr. Mack's sentence
12 in this case as well as in the 2005 case?

13 MS. BRENNAN: Yes, Your Honor. Thank you.

14 In fact, my arguments, I would ask the court to
12:36:13 15 apply them to both, the supervised release violation and the
16 court's sentence with respect to what it heard during the
17 trial of this matter.

18 Because what we know now is that Jeremy Mack is a
19 predator. He looks at a young girl or a drug addict or even
12:36:29 20 his own children as opportunities. They're not people.
21 They're not children who need a father. They're
22 opportunities and they're dollar signs to him. He sees a
23 young girl who's drug addicted and to him that is a gold
24 mine. That is his ultimate opportunity to exploit, demean,
12:36:48 25 and abuse these girls.

1 He was released from the Bureau of Prisons on
2 November 16, 2012. And what did he do after serving 100
3 months of federal time? He immediately re-offends, Your
4 Honor. He gets that gift from his brother-in-law of cocaine
12:37:05 5 and he immediately starts selling. Except this time he
6 decided to go bigger. Drug trafficking apparently wasn't
7 enough for him. So he decided he was also going to start
8 selling girls, but he used his drug trafficking to prey on
9 the most vulnerable that he encountered. He preyed on these
12:37:27 10 girls, Your Honor.

11 We have photographs, the court saw them at trial,
12 Victim Number 1, Victim Number 2, Number 3 and Number 4.
13 What did these girls have to endure when they got naively
14 hooked up with him? First, he fronts them dope. He
12:37:48 15 pretends that he's kind to them and he's going to give it to
16 them for free. And then he waits and he watches while they
17 get hooked. Their habit increases. Their need increases.

18 Three of these victims are heroin addicts, which
19 the court now knows is the worst kind of addict to be,
12:38:05 20 because it isn't a simple withdrawal process. It is the
21 most painful and excruciating withdrawal process. I think
22 Katie Frioud said best, "When you are withdrawing, it feels
23 like your insides are on fire, but you're covered with goose
24 bumps because you have the chills. You can feel every one
12:38:25 25 of those goose bumps and they hurt." The nausea, the

1 shaking, the vomiting, the diarrhea. He knew what it would
2 do to a heroin addict to get them fully hooked on free, I
3 put it in quotes, free drugs, and how desperate they would
4 be to maintain that habit. And then he drops on them that
12:38:45 5 they had a debt.

6 Sometimes the debt was excruciatingly high, and he
7 told them that they had one way to pay off that debt to him.
8 He wasn't telling them to go get a job at McDonald's, 7-
9 Eleven. He wasn't encouraging lawful employment. No, he
12:39:05 10 encouraged the most exploitive form of income that he could.
11 He told them they had to go on Backpage.com and engage in
12 commercial sex acts. Go to random hotels and have sex with
13 random men as a way that they would pay off their debt to
14 him.

12:39:21 15 And then he put a price on each one of their
16 heads. If it was half an hour, it was \$120. If it was one
17 hour, it was more. If it was something unusual, he set the
18 price. They weren't doing this on their own. He had
19 complete control over them.

12:39:40 20 He took all of the money that they received after
21 these acts, immediately. They came in the door, they had to
22 hand it over to him. He limited who they could talk to,
23 when they could leave the house. Victim Number 1, she
24 wasn't allowed to just leave that house. He made everybody
12:40:03 25 leave in a supervised way because he needed to hold on to

1 his money-making enterprise. He monitored phone calls. He
2 set the rules on how they had to appear, how they had to
3 act, how they had to behave. He kept them under his control
4 and the way he did it -- actually, there was no limit to
12:40:25 5 what he was willing to do to make sure that these girls all
6 feared him and that he had complete control over every
7 aspect of their lives.

8 He withheld drugs from them when they were not
9 going on appointments, when they were not making enough
12:40:39 10 money for him. He withheld heroin from desperate heroin
11 addicts. He choked. He strangled. He hit. He would say
12 to these girls, "I'm not afraid to kill a bitch. Not afraid
13 to kill a bitch, chop her in pieces and throw her in the
14 river."

12:40:57 15 He paraded 8 Tattersal Court with guns. He used
16 the guns to intimidate, threaten. Victim Number 2 described
17 a night where he went running out of the house with his
18 firearm drawn. He very cleverly kept them buried outside or
19 wherever he had them outside the house because he knew his
12:41:20 20 probation officer was coming and he didn't want his
21 probation officer to find the guns because he knew full well
22 that would be yet another federal offense for him.

23 He had a taser; he had a knife; he had a bullet
24 proof vest. When he thought money came up missing, he did
12:41:39 25 cavity searches. Even he admitted it on the phone and it

1 was an exhibit at trial. What he did he say to his sister?
2 I think his words were, "Yeah, you know, I searched those
3 motherfuckers when I thought that there was money coming up
4 missing." I mean, he just demeaned and abused. There was
12:41:58 5 terror in that house.

6 With Victim Number 1, she tried to leave the house
7 to go to her mom. She tried to leave. She didn't have his
8 permission. What did he do? He punched her in the face and
9 split her lip.

12:42:12 10 Victim Number 4, what do we know, because the
11 court heard from Ashley? He choked her out, choked her.

12 He was not afraid to be violent. He was not
13 afraid to threaten to be violent. He was not afraid to put
14 pressure, which is a word certainly used by Victim Number 4.

12:42:34 15 He was not afraid to coerce and intimidate to get what he
16 wanted, make sure his bottom line was constantly improving.

17 Some of his own witnesses came in here and
18 corroborated even what the victims were saying. Aubry
19 Dillinger, Victim Number 4 made it very clear to the
12:42:51 20 defendant she did not want to go on Backpage.com. He made
21 her go. Monica Freedman talked about driving Victim Number
22 4 back to his house after an appointment while she cried
23 because she did not want to go back to him. They all feared
24 him.

12:43:08 25 Victim Number 3 feared him so much so when she

1 finally had enough at that Camelot Motel, what did she do?
2 She desperately hopped into the car of somebody else's John
3 and fled away. She ran away. A few short days later, this
4 defendant was arrested.

12:43:26 5 We don't know what would have happened to her if
6 he had been on the streets for any amount of time longer,
7 but we knew what she feared would happen was he would come
8 and find her, which is why she fled the Camelot Motel.

9 We can't -- I don't even think I could ever
12:43:44 10 properly explain in any way the amount of damage that he has
11 done, and let's put a timeframe on it. We're talking
12 November 16, 2012 when he's out, and April 9, 2013. That is
13 a really short window of time to do this much damage and be
14 involved in this much criminal activity, but he did it. He
12:44:05 15 set out to do it, because there wasn't a day that went by
16 after he was released that he wasn't exploiting someone in
17 some fashion or he wasn't engaged in criminal activity.
18 When he got out, he decided to go big evidently.

19 But the damage to these victims, Your Honor, the
12:44:26 20 increased drug dependence, the court got to see and hear
21 from Victim Number 2. She described herself as having
22 social anxiety. She described the very first night she went
23 to the defendant's house, how she is somebody who is
24 socially awkward. And that is the prime target for a
12:44:47 25 predator like Jeremy Mack because he saw her. He saw her

1 shyness; he saw her awkwardness. He saw her interest in
2 cocaine and he pounced, and then he worked her and then he
3 sent her out to work for him. She was 16, and he knew it.
4 She was the same age as one of his sons and younger than one
5 of his other sons.

6 Victim Number 1, as this court knows since the
7 verdicts in this case, the FBI had actually had to
8 investigate threats being made on-line against her by some
9 of his accomplices and some of his trial witnesses.

10 Victim Number 1, the court got to hear from, as
11 well, she has certainly come a long way, but the emotional
12 damage, the emotional scarring what she had to endure from
13 him, she still carries that around. She is still sober; in
14 fact, yesterday, I believe roughly yesterday, we've hit nine
15 months. So if she hasn't received it, she will be getting
16 another token.

17 And Victim Number 4, that impact statement is hard
18 to read, and it is consistent with what she has said to the
19 government and it is consistent with what she has said to
20 defense counsel. When she wrote that victim impact
21 statement, a great deal of time had passed from the trial.
22 And she was alone by herself with a computer, and she got to
23 pour her heart out to this court in this victim impact
24 statement.

25 And what she describe? She described essentially

1 what the court had heard from these other victims, but even
2 more, she described not being able to do anything without
3 his permission, not being allowed to even have her own
4 personal belongings anymore, how he demanded that even after
12:46:59 5 she do all these appointments, that he come home and have
6 sex with her and how he ripped her and didn't care that she
7 was bleeding or hurt, but made her go out and engage in
8 additional sex acts so that he could make money.

9 He played on her emotion and vulnerability.

12:47:16 10 There's no doubt about it. She was vulnerable. She was
11 exploited. He kept promising her he wanted to get her an
12 apartment.

13 Your Honor, we have over 300 phone calls that we
14 listened to, his jail calls, that apartment was a key fact
12:47:32 15 for him for two reasons; he kept identifying her as his
16 number one defense witness, the one that was going to get
17 him off, because he was counting on her saying whatever he
18 wanted her to say; and two, because he wanted her to keep
19 working to make money for him.

12:47:51 20 But it's why, Your Honor, Carolyn Kucharski's
21 decision to get the defendant on the phone, on one phone and
22 then to use her personal cell phone to call Victim 4 and to
23 mesh those calls so they could hear from one another is such
24 an important moment in this case. Here was a victim who
12:48:18 25 finally thought she got free. When she tried to flee that

1 house, and, Your Honor, she did. She references being
2 scared and trying to escape in her interview with the
3 defense.

4 She told us on one occasion, she packed all of her
12:48:31 5 belongings into a black garbage bag and pretended to be
6 taking out the garbage to try to leave that house. Did she
7 come back? Absolutely she came back. There's no doubt.
8 She had no money. She had an intense heroin habit. And he
9 always promised her that things would change and he would
12:48:48 10 take care of her and he never did. Because as soon as she
11 walked in that door, he would make her cry and he would put
12 her back up on Backpage.

13 The timing of things is pretty interesting, but
14 that call, Your Honor, what that said to her was she had
12:49:08 15 finally gotten free, and yet he was still able to get to
16 her, even though there's a no contact order. There's now an
17 attorney who's going to make sure that he can still get to
18 her.

19 That is just essentially the nature and
12:49:28 20 circumstances of the drug trafficking and the sex
21 trafficking. What we also know is that he obstructed,
22 tampering with witnesses and obstructing, telling people not
23 to talk to the FBI, trying to make sure Ashley Onysko
24 doesn't flip on him, make sure she has money, make sure you
12:49:43 25 reach out to her, make sure she doesn't flip. He's afraid

1 of what they're going to say. Why else would you tell
2 Victim Number 4 not to talk to the FBI unless you know she's
3 going to incriminate you?

4 With respect to his son, Toby Lewis, when he was
12:49:59 5 released in November of 2012, Toby was still 17 years old.
6 We know from Aubry Dillinger that in December of 2012, when
7 they're say staying at the hotel, before they moved into
8 Tattersal, that he and his son are selling guns, his minor
9 son. And then he uses Toby Lewis to help him dispense the
12:50:21 10 drugs and sell the drugs and make sure that, you know, when
11 he allowed it, when these girls were actually able to get a
12 shot of heroin, and help with getting the girls back and
13 forth from appointments.

14 He was proud that Toby was involved in this
12:50:38 15 business, and then when he hears his son is going before the
16 grand jury, what does he do, the proud parent that he is?
17 He tells his son to lie to the grand jury. He tells his son
18 to incriminate himself, at now the ripe old age of 18,
19 possibly look at his own federal time to try and save Dad.

12:50:57 20 Toby Lewis could have been indicted here. He
21 wasn't. He has this as an example, though. The
22 exploitation of people did not end with the victims
23 identified in this indictment, didn't end with his own
24 children. It included also all of the other people he sold
12:51:21 25 drugs to.

1 The court got to see some people he brought in
2 here. Every one of them knew him because he was a dealer.
3 Not one of them had a lawful relationship with him. And if
4 you just compare their ages even, he's a then 38-year-old
12:51:43 5 man, now 39. These kids, we're talking 20, 21. These are
6 the people he decides to surround himself with. Why?
7 Because he can exploit them, because he can prey on their
8 vulnerability and try to get rich off of them.

9 He is the very definition of a career offender,
12:52:02 10 Your Honor. You just have to look at paragraphs 99 to 119.
11 That is a pretty long criminal history. Every time he gets
12 out, he re-offends. There has not yet been a single term of
13 incarceration or a single conviction that has deterred him.
14 In fact, his conduct is steadily escalating as we go. He
12:52:25 15 cannot and will not be deterred. He cannot and will not be
16 rehabilitated.

17 Your Honor, I would like to play for this court
18 three phone calls, and they're important for this reason.
19 They show that he cannot and will not be deterred, because
12:52:40 20 even after being arrested by the Elyria Police Department
21 and the drug task force out there in April -- we just pulled
22 here for the court two calls where he's talking about
23 continuing his operation while he's in jail. And then I
24 will play for the court a later one, July 13. After he's
12:53:01 25 been federally indicted for these offenses, he still talking

1 about how he's going to run his businesses from the inside.

2 Your Honor, I have marked here for the court, it's
3 Government's Exhibit 1, it's marked sentencing, a copy has
4 been provided to defense counsel. I also provided defense
12:53:23 5 counsel last week with a list of the excerpts I'm going to
6 play. I'm not going to play the full calls. Like I said,
7 I'm not -- each call is approximately 15 minutes. I'm not
8 going to play the full portion.

9 The first call is an April 18 call between the
12:53:40 10 defendant and his son, Toby Lewis. You'll hear that there's
11 conversation about the apartment, as well as additional
12 conversation, and if the court would allow me to sit to do
13 this.

14 THE COURT: You may.

12:53:51 15 MS. BRENNAN: Thank you.

16 Your Honor, just for the record, that's time
17 stamped 158 to 237.

18 THE COURT: Thank you. I am moving now to five
19 minutes and 55 seconds.

12:56:58 20 (Phone call played.)

21 MS. BRENNAN: Your Honor, that call ended or that
22 excerpt ended at 7 minutes and 30 seconds.

23 It's important to note that during that mesh call
24 that Ms. Kucharski orchestrated or participated in, that one
12:57:10 25 of the things the defendant said to Victim Number 4 was that

1 he was still interested in getting her that apartment.

2 Forgive me, Your Honor. This call, the next call
3 is going to be April 23, 2013 at 10:17 p.m.

4 Your Honor, Jesus is the caller, because that is
12:57:44 5 an inmate that the defendant was with at CCA. He used that
6 individual's pin number to make that call. We will hear the
7 defendant's voice on here. He's identified -- I would say
8 that the court has already with respect to briefing seen a
9 letter written to who he identified as Toby Clifton when he
12:58:03 10 was trying to avoid the no contact order and the return name
11 on that, because he didn't want to put his own return name
12 on Jesus again.

13 (Phone call played.)

14 MS. BRENNAN: Your Honor, I think the court might
12:58:46 15 recall from Government's Exhibit 30, the Backpage ads,
16 Luscious is the name that Ashley Onysko used, or Luscious
17 Love, but this is Ashley Onysko.

18 (Phone call played.)

19 MS. BRENNAN: Your Honor, that is the beginning of
12:59:45 20 that call up through 1 minute and 26 seconds.

21 I will now fast forward to 8 minutes and 26
22 seconds.

23 (Phone call played.)

24 MS. BRENNAN: Your Honor, that time stamp ending
13:03:05 25 on that one is 11 minutes and 26 seconds. I just -- for the

1 record, in case it couldn't be heard, he was saying that
2 "Wait until Toby gets that ho up underneath his wings."

3 Now I'm going to play the last of the calls that
4 we've selected out of the 300 or so that we have. This is a
13:03:25 5 call that's made while he's under federal indictment to his
6 brother Johnny. I'm going to go and fast forward to 7
7 minutes and 50 seconds.

8 (Tape played.)

9 MS. BRENNAN: Your Honor, I stopped that call at
13:06:18 10 10 minutes and 15 seconds.

11 THE COURT: Was that started at the beginning?

12 MS. BRENNAN: I'm sorry, no, it was not, Your
13 Honor. It started at 7 minutes and 50 seconds. I played a
14 little portion of the beginning so you can hear the
13:06:28 15 defendant identify himself, and I am sorry, it sounds like
16 my computer is about to take off, a very strange whirring.

17 THE COURT: What was the date of that?

18 MS. BRENNAN: That one was July 13, 2013,
19 approximately 2:25 p.m.

13:06:45 20 THE COURT: If you could start with the first
21 call, which I believe you said was April 18?

22 MS. BRENNAN: Yes, Your Honor.

23 THE COURT: And you played two excerpts from that
24 call?

13:06:57 25 MS. BRENNAN: I did, Your Honor. That was a phone

1 call with the defendant and Toby Lewis, the portions I
2 played were the conversation between him and his son, Toby
3 Lewis, April 18, 2013, at approximately 11:33 p.m.

4 Would you like me to identify the time stamp
13:07:14 5 again, Your Honor?

6 THE COURT: 1:58 to 2:37?

7 MS. BRENNAN: Yes.

8 THE COURT: And the second excerpt was 5:55 to
9 7:30?

13:07:24 10 MS. BRENNAN: And the next phone call, Your Honor,
11 was --

12 THE COURT: April 23?

13 MS. BRENNAN: Yes. Did you want me to go through
14 them all?

13:07:31 15 THE COURT: Yes, please.

16 MS. BRENNAN: April 23, approximately 10:17 p.m.,
17 between the defendant and Ashley Onysko, who identified
18 herself by her nickname, Luscious. That was at the
19 beginning of the call up through 1 minute and 26 seconds,
13:07:45 20 and it began the next excerpt because there were only two.
21 The next one was 8:26 to 11:30.

22 And just, again, for the record, the final one was
23 July 13, 2013, approximately 2:25 p.m. between the
24 defendant, and we believe the person speaking was his other
13:08:05 25 brother, Johnny. He's got more than one. That one we

1 played the very beginning so the court could hear him
2 identify as the caller, but the excerpt was 7 minutes and 50
3 seconds to 10 minutes and 12 seconds.

4 THE COURT: Thank you.

13:08:22 5 MS. BRENNAN: And what those calls show the court
6 is that he's never going to stop. A hundred months didn't
7 stop him, not even for a day or two once he was released and
8 being incarcerated on these charges, he's still not
9 interested in ceasing any of his criminal conduct. He
13:08:41 10 scored a 48. Just take the Count 2 for -- I'm sorry, Count
11 3 for Victim Number 2 alone, that was a 44. He quite
12 literally has taken himself off the charts.

13 That 48 accurately reflects each and every crime
14 he committed in this case, the 48 does. The guidelines
13:09:07 15 don't go that high, but the 48 accurately accounts for every
16 single one of his crimes. The speed with which he did it
17 because he certainly didn't waste any time, the amount of
18 criminal activity in just a four-month window of time, and
19 the fact that he is willing to do this even while he's
13:09:25 20 incarcerated and the only thing that seems to be causing him
21 a little bit of delay in the plan is that he has to first
22 get past his criminal trial.

23 The guidelines end at 43, so that's where he is,
24 Your Honor. He has earned that spot at a 43, Criminal
13:09:45 25 History Category VI. There is no range there, Your Honor.

1 It is life. And he has earned that time. That is the term
2 that will adequately reflect the depravity that he showed in
3 that very short period of time, the violence, his criminal
4 history, the damage he has done to the victims. It's also
13:10:09 5 the only thing that will adequately protect society, because
6 here's what we know both by looking at the PSR, seeing his
7 conduct here, the supervised release violations so quickly
8 following his release from the BOP, the indictment time
9 period, and the phone calls we just played, when he is
13:10:30 10 released, he will re-offend. This is what the life-style he
11 has chosen. He proudly considers himself a criminal.

12 A life term will hold him accountable for all that
13 he has done, all that he has allowed himself to be, and it's
14 blatant disregard he has shown for any criminal law or even
13:10:58 15 just the simple fact of pretrial detention, it is not
16 greater than necessary, Your Honor, not in this case, not
17 for this defendant.

18 THE COURT: All right. Thank you, Ms. Brennan.

19 All right. Mr. Whitney, we have been going now
13:11:39 20 for over two hours. I will ask you if you need a break
21 before you proceed or if you would like to proceed.

22 MR. WHITNEY: I don't need a break. I don't know
23 if anybody else does.

24 THE COURT: Very well. I will permit you to
13:11:52 25 address the court relative to your client's sentence in this

1 case.

2 MR. WHITNEY: Thank you, Judge.

3 Judge, I, too, would indicate that my remarks
4 would attach both to the supervised release violation and to
13:12:08 5 the substantive counts he was convicted of.

6 The government seems to make a lot out of the fact
7 that he got out of jail and got out of prison and went right
8 back to criminal activity. That's true. And it's because
9 that's all he knew was criminal activity.

13:12:32 10 If you look at his background, Your Honor, I think
11 it is relevant. I mean, the law makes it relevant and I
12 know you make it relevant, that his whole family has been in
13 prison. His brothers, his sons are all headed that way, his
14 parents. He was raised in such a -- with a dynamic of
13:12:56 15 criminal activity that that's all he knew when he got out of
16 the penitentiary. He bounced around from group home from
17 group home as a child. I think he spent seven or eight
18 years away from his home before he was of age. He's got, as
19 you can see, a criminal history as a juvenile.

13:13:20 20 And maybe it's just as I get older, I start
21 thinking there, but for the grace of God why? I say to
22 myself in these cases all the time, why is it that Larry
23 Whitney doesn't go get some heroin? I have the ups and
24 downs more than most people do, I would say in my week. I
13:13:38 25 mean, I've had some real down days. And why is it that

1 Larry Whitney doesn't go get some heroin like we've seen
2 here in these 45 hours of trial?

3 Is it because I was -- not because I'm not
4 depressed, because I was raised by loving people, people
13:13:56 5 that loved me, and people that wanted to see that I knew
6 what education was, and that I knew what was right and what
7 was wrong and how to earn a living and how to not earn a
8 living. That's why I don't do that and why other people do
9 that.

13:14:14 10 And I think that's so important, and I would ask
11 the court to consider the fact the way he was raised. He
12 was raised by people that said the way to earn money is to
13 pimp or to sell drugs or to steal rather than "Go get
14 educated, Larry. Go get an education. Take your brothers
13:14:35 15 with you and get educated. If you do something wrong,
16 you're going to get it from me. Rather than great job,"
17 that kind of thing.

18 And maybe it's just -- I guess the older I get the
19 more I see this, and I just wonder and I think that's the
13:14:57 20 formula. And I think that is a formula that we don't see in
21 this family dynamic that he was raised in. So why did he do
22 that? He did it because that's all he knew.

23 Now, punish him, I think, for what he did. I
24 think he would be satisfied if he were to be punished for
13:15:17 25 what he did. If we look at these victims that come into

1 this case, none of these victims -- it's as if the
2 government says that he created this addiction for these
3 people, that he created this atmosphere.

4 They came to him, Judge, and brought with them
13:15:37 5 their addiction. They brought with them all these problems.
6 He didn't create these problems.

7 Victim Number 1 said she was 14 or 15 years old
8 she had been addicted to drugs. I think at the time of the
9 trial, as she's almost nine months, she was five months
13:15:57 10 clean and sober. That's really the first time that has
11 occurred, that is done, that happened to her. She also said
12 that she had a debt, knew about the debt that she had to him
13 and stayed and came back and knew what she was getting into.

14 She was there five weeks, five or six weeks,
13:16:23 15 however you count it. Let's say it's six weeks. Six weeks
16 of this woman's life she was with him. Is it fair now to
17 blame, to bring on his shoulders all of the misery that this
18 addiction has created for her and her family to rest it on
19 his shoulders because she was with him for five or six
13:16:43 20 weeks, however long it was, when she brought the addiction
21 to him? I just don't think that's fair.

22 Victim Number 2, she was there about three or four
23 weeks. She told me in my cross-examination, "If you can
24 think of the drug, I used it since I was 13." She brought
13:17:09 25 that with her to him. She found him buying drugs.

1 Number 3, this started at least a year and a half
2 before the drug addiction before she met the defendant.
3 That she made many attempts to get clean. She met him
4 trying to buy drugs. She bought drugs from him. And she,
13:17:41 5 again, agreed to the terms of this agreement that they had
6 among each other. "I was eager to do it so that I could get
7 drugs." That's what she told me. "I wanted drugs and I
8 didn't care what I was doing to get the drugs. I left,
9 sure." She ran away from him, but he never chased her down.

13:18:07 10 He never -- she said she actually had some contact
11 with him after she left about something. So I think when
12 you look realistically at what occurred here, a realistic
13 look at the facts and circumstances and evidence of this
14 case, I think you will find that these people, all four of
13:18:30 15 these people named in the indictment -- the fourth one I
16 will talk about in a moment. She was there the longest.
17 She was there about three and a half months of her life and
18 had a drug habit, a serious drug habit for almost -- since
19 she was like 16, some four years -- four years before she
13:18:51 20 even met Jeremy Mack. Again, she met him buying drugs,
21 going to buy drugs to support a habit.

22 So to say then that he is to shoulder the burden,
23 shoulder the evil that this heroin creates in a family, in a
24 community for his five weeks with Number 1, three weeks with
13:19:17 25 Number 2, ten days or two weeks with Number 3 and three and

1 a half months with Number 4 is just not fair.

2 He talks -- and it's true, he talks about this
3 escort service that you heard on the audio here a few
4 moments ago. He thought that was a legitimate -- he's not
13:19:43 5 talking about being a pimp. He's talking about an escort
6 service. He's talking about a legitimate business that he
7 thought, and I think the computer dumps that they had
8 indicate that he looked -- the computers were used to
9 generate research about this kind of a business. And he
13:20:02 10 thought that he could run a legitimate escort business.

11 And these talks, and most of the conversation you
12 heard here on the -- was before he was even federally
13 indicted. This was conversation that he had before the
14 federal indictment came down.

13:20:21 15 I think the true story here is that during the
16 time that these girls were with him, he provided drugs for
17 them. They stayed there. They used the drugs, that he --
18 and will take -- we will take Victim Number 4 and talk about
19 her for just a couple of minutes.

13:20:52 20 It's not fair to characterize, I don't think we
21 both heard -- the government heard an interview that I
22 conducted of her on December 11 of 2013. That was taped.
23 The government heard that a couple hours ago.

24 It's not fair to characterize, I don't think, that
13:21:08 25 interview as being consistent with the information that the

1 government had. It's just not fair to say that. When she
2 tells me that "He never forced me to do this, that it was my
3 choice. That if I were to ask you if he forced you to do
4 this, what would you say? No, that was my choice. Did he
13:21:30 5 hold drugs over your head? No. Could you come and go?
6 Yes. Did he -- was he supportive of you in contact with
7 your family? Yes."

8 It's not -- I'm not getting at -- I'm not trying
9 to get at here and invade the province of this jury in
13:21:51 10 determining that he was guilty of that conduct with Number
11 4. What I am trying to tell the court is that how can you
12 put any credence in this, in this victim impact statement
13 from a witness who I think at the same time she's talking
14 with me, telling me she's not forced, she's talking with the
13:22:16 15 government, saying she is forced. You can say whatever you
16 want about the distance from the time and so forth, and I
17 don't know -- we don't know what's changed in her life in
18 the last couple of weeks before she filed this victim impact
19 statement.

13:22:31 20 But I think it's substantial for the court to look
21 at -- I just don't think you can put any credence in what
22 she says. I think she told me what I wanted to hear and she
23 told the government what they wanted to hear. Now I think
24 she's telling the court what she thinks you want to hear.

13:22:48 25 And I don't know -- this trial table shares

1 probably over 100 years of trial experience, and none of us
2 put her on for whatever reason that was. I know the reason
3 I didn't put her on. One of the reasons was because I
4 didn't know what she was going to say. I didn't have faith
13:23:05 5 on what she told me or what she told the government.

6 So how can we now put her up to you saying,
7 "Judge, you should take this into account in determining
8 this sentence," and I don't think we can do that. I think
9 if we do do that, I think we arrive at perhaps a sentence
13:23:23 10 that is skewed for some reason based upon I think what the
11 true facts of this case are.

12 So I guess what we're asking the court, and I am
13 just here to make one point, and I am going on a limb to do
14 this, but I think these kinds of cases I think require
13:23:42 15 lawyers to go out on a limb. I am just asking the court to
16 look at what is fair and just in the whole picture here, not
17 just in this couple of months, a couple, three and a half
18 months, longest time anybody has been with him, to look at
19 what they brought to the equation, they meaning Victims 1,
13:24:04 20 2, 3 and 4. Look at what they brought to this group.

21 And look at I think -- I don't think the picture
22 painted by the government is supported by the evidence in at
23 least some ways. I don't remember the threats and I don't
24 remember the repeated cavity searches that they're talking
13:24:26 25 about here. I don't remember that being offered in evidence

1 here. I remember there may be a discussion about one time.
2 That doesn't mean it happened 50 times. I remember evidence
3 of people coming and going. I remember evidence of not
4 having the course of nature contact over these people that
13:24:48 5 the government contends to -- the government indicates is
6 evidenced here.

7 So what we're asking the court to do is sentence
8 him for what he did. Sentence him for what we think the
9 total picture, all of the evidence in context indicates, and
13:25:07 10 to consider not only that, but to consider as this court is
11 required to do, consider the history and background of this
12 defendant, consider the upbringing that he had, things that
13 aren't his fault. I mean, he didn't create that atmosphere
14 in his home. It was created for him. And I think we all
13:25:31 15 are creatures of what we learn in the first few years of our
16 lives and I think we all -- those of us that do this kind of
17 business, I think, appreciate that more than other people.

18 And there's no question that heroin and drug
19 addiction and prostitution are horrible things in our
13:25:51 20 society. But does he deserve to be -- to stand as the
21 poster child for all of this and all of the injury that the
22 families of these four people have undergone for what he did
23 and for the contact he had with these people for this
24 limited amount of time?

13:26:11 25 Thank you.

1 THE COURT: All right. Typically, in these types
2 of sentencing, I give the attorneys two opportunities. So I
3 will ask the government if there's anything further you
4 would like to add to your argument, statement to the court
13:26:56 5 relative to sentence and, Mr. Whitney, then I will give you
6 an opportunity, another opportunity, and then I will hear
7 from Mr. Mack himself, should Mr. Mack wish to address the
8 court.

9 MS. BRENNAN: No, Your Honor. Thank you, Your
13:27:12 10 Honor.

11 MS. SKUTNIK: Thank you, Your Honor. Your Honor,
12 just briefly. I want to point out that the government's
13 position in this case which I think was articulated very
14 well by Ms. Brennan is the fact that what makes Mr. Mack so
13:27:28 15 incredibly dangerous is his ability to, one, pick people
16 that he can exploit, and more importantly, two, his ability
17 to control other individuals.

18 And so respectfully to Mr. Whitney, the government
19 doesn't assert that in this case Mr. Mack got any of these
13:27:48 20 individuals addicted to heroin; in fact, the evidence is
21 quite to the contrary. For example, just by way of
22 reminder, Victim Number 1 spoke of the fact that she was in
23 a horrible car accident, was over-prescribed pain medication
24 by a physician, became addicted to said pain medication, and
13:28:08 25 then ultimately that developed into a heroin addiction when

1 she could no longer afford the Oxycotton that had been
2 prescribed by a licensed medical professional. So we're not
3 saying that by no means.

4 But certainly when they walk through that door to
13:28:24 5 buy drugs, there's nobody in this room who's better able to
6 assess the vulnerabilities of people than Mr. Mack himself.
7 Even with all of our trial experience as we sit here at this
8 table and the court's experience, there's nobody better at
9 picking out the weak, the weak link, or the weakest duck,
13:28:47 10 and then using a pattern of manipulation that is far more
11 compelling and far more effective in the end than any sort
12 of actual physical violence, although, there was physical
13 violence and physical threats, and so that's what we're
14 saying about the dangerousness of Mr. Mack, his ability to
13:29:09 15 control. If there was one word to sum up this case, it
16 would be the word "control," and that's what he was able to
17 do.

18 And if you ask an individual, if you ask any one
19 of these victims today to describe what is the legal
13:29:23 20 definition in federal court of force, nobody would be able
21 to give the definition that was so well put forth in front
22 of the jury and explained to them, because they have their
23 own conception of what force means.

24 So we have to look to what the defendant did in
13:29:42 25 order to control them, to coerce them, the manner in which

1 legally they were forced and placed in a position where they
2 had no other choice but to do the terrible things that they
3 had to do in those hotel rooms hour after hour after hour,
4 sometimes as many as 13 to 14 times a day so that they could
13:30:02 5 beg for that shot or that point of heroin.

6 And that segues, Your Honor, into Victim Number 4.
7 Because of all of the individuals involved in this case, I
8 suspect there was nobody sicker than Victim Number 4, and
9 the relationship between Mr. Mack and Victim Number 4 was
13:30:19 10 that of almost a domestic violence victim, that type of
11 cycle. And you could see it in the testimony of the
12 individuals as they described that relationship from as
13 early as they met in that hotel room situation up and
14 through all of the time that was accounted for at Tattersal.
13:30:38 15 And that push/pull and how he worked her more than any other
16 person in that household.

17 Your Honor, Mr. Whitney speaks of issues regarding
18 her credibility. And absolutely, absolutely, she has given
19 conflicting statements as it related to the activity that
13:30:58 20 occurred in that home, and isn't sure and doesn't
21 characterize to Mr. Whitney that he forced her to do certain
22 things. But what we do know is that she said she was
23 pressured by the defendant to do certain things. What we do
24 know is that she didn't get heroin unless she did certain
13:31:21 25 things.

1 What we do know is that she said to Mr. Whitney
2 and to the government that he would forcibly have sex with
3 her to the point that he physically damaged her and created
4 or caused her vagina to bleed and then would force her to go
13:31:38 5 on appointments with clients because he wanted the money
6 that she would make.

7 What we do know is that in an interview with the
8 government, on June 27, 2013, she outlined and explained the
9 lifestyle and the activity of the defendant that is
13:31:51 10 consistent with the victim impact statement that she gave to
11 this court. What we do know is in the interview with
12 Mr. Whitney, she indicated a number of occasions where
13 violence took place in that household. She indicated a
14 number of occasions when she attempted to leave that
13:32:07 15 household. She indicated that the defendant strangled her,
16 threatened to cut her up. These are all things that are
17 consistent with the environment in the Tattersal house that
18 was described in the trial testimony which the court should
19 rely upon.

13:32:25 20 So, Your Honor, whether or not the court places
21 any weight, some weight or significant weight to Victim
22 Number 4's statement, the fact of the matter is, she is able
23 to put into words today, and I don't know if she's clean or
24 sober today, I really don't, because it varies from day to
13:32:50 25 day. She's has a horrific addiction to heroin and has not

1 found recovery yet, but what we know is that she was able to
2 really well articulate in that statement just what life was
3 like in that household, just the amount of level of control
4 the defendant had on anybody who walked into that house.

13:33:15 5 Think about it, Your Honor. Think about those
6 kids that he insisted be called to the stand in his defense,
7 how he managed to marshal them to come here to try to defend
8 what was going on in the house and to give the script that
9 everybody was happy and everything was great in that house,
13:33:40 10 when we know all evidence really to the contrary and under
11 pretty heavy cross-examination, evidence to the contrary.

12 There's few people -- I mean, think about the
13 situation respectfully that occurred that caused the removal
14 of prior counsel. Think about the amount of manipulation
13:34:02 15 and control that occurred while this case was pending by
16 Mr. Mack, in order to be able to circumvent, in order to be
17 able to ultimately have what he wanted, which was contact
18 with that one woman that he thought he had the most control
19 over. It's not just heroin addicts that he had the ability
13:34:25 20 to control or affect. He's a quite powerful man when it
21 comes to finding people's weaknesses and manipulating them.

22 And so to come back to the original statements
23 made by my cocounsel so eloquently in her first remarks,
24 that's what makes him so dangerous. And respectfully, if
13:34:45 25 that is all he knows, then that means it's all he will ever

1 know and he will never change. But to blame him -- or to
2 blame the family for what he's become, frankly, he's one of
3 the eldest in the line of siblings. I think it's better to
4 show that they followed in his footsteps just as he
13:35:05 5 attempted to mentor his own children to engage in criminal
6 activity. How he has not only claimed that he, you know,
7 became this person, this monster because of his childhood,
8 but he tried to pass that on to his own very children.

9 And if you close with a visual, think about the
13:35:22 10 pictures that were admitted during the course of this trial,
11 with his sons, sitting in that house on Tattersal,
12 surrounded by heroin addicts that had to go around in their
13 underwear, in essence, right, high, vomiting, sick, stoned
14 and there they are with all the money spread out in front of
13:35:44 15 them, the proceeds of the illegal activity of their father,
16 their mentor. He's a one-man crime wave that he wants to
17 continue. He wants to continue to affect others to create
18 further ripple effects of what he's capable of.

19 So, yeah, he's not the guy that walks up to
13:36:07 20 somebody with a gun. He's not the person that pulled the
21 trigger. He did worse. He brought all forms of control to
22 bear, to harm these people.

23 And the last visual I will leave with you, Your
24 Honor, is that picture of Victim Number 1. There were lots
13:36:23 25 of pictures that came in in this case. Remember what she

1 looked like when she first went to Tattersal? She's a
2 beautiful young lady, not much different than what she
3 appeared -- how she appeared in this courtroom. Then think
4 about that picture of her on the bed five to six weeks
13:36:41 5 later. There are people starving in Africa that looked
6 better than she looked. She was so emaciated. That's the
7 amount of damage that he was able to do in five to six
8 weeks. Multiply that by all these girls, Your Honor. Thank
9 you.

13:37:03 10 THE COURT: Thank you, Ms. Skutnik.

11 Mr. Whitney or Mr. Ray?

12 MR. WHITNEY: Nothing further, Your Honor.

13 THE COURT: All right. Mr. Mack, I will offer you
14 an opportunity to speak, but before I do, again, now, we've
13:37:19 15 gone for an excess of two and a half hours, and if you need
16 to take a break before you address the court, if you would
17 like to address the court, you may request a break.

18 THE DEFENDANT: I have nothing to say, Your Honor.

19 THE COURT: You have nothing to say. Let me
13:37:33 20 indicate to you that this is your sentencing hearing, and
21 you are permitted to address the court in mitigation of your
22 sentence in this case, and if you wish to address the court,
23 this is your opportunity to do so. I want to make sure you
24 know you have this opportunity.

13:37:48 25 THE DEFENDANT: Yeah, I understand.

1 THE COURT: Okay. And you do not wish to address
2 the court?

3 THE DEFENDANT: I do not.

4 THE COURT: Okay. First of all, the court wishes
13:38:55 5 to indicate that as always in sentencing, pursuant to Title
6 18, United States Code, Section 3553(a), the court is
7 required to impose a sentence sufficient, but not greater
8 than necessary, to comply with the purposes of sentencing
9 set forth in the sentencing statute.

13:39:19 10 In determining a sentence, the court is required
11 to consider the applicable factors enumerated in Section
12 3553(a), which the court finds to be as follows:

13 First of all, with respect to the nature and
14 circumstances of the offenses, there was a trial in this
13:39:56 15 case, and so based upon the testimony itself, the court is
16 obviously well aware of what the nature and circumstances of
17 the offenses were. I will just very briefly summarize them
18 for purposes of the court's analysis.

19 From on or about December 12 -- I'm sorry, on or
13:40:34 20 about December 2012 and continuing to on or about April 9,
21 2013, in the Northern District of Ohio, Mr. Mack, his
22 codefendant, Ashley Onysko, and others, did knowingly and
23 voluntarily conspire, combine, confederate and agree with
24 each other to knowingly recruit and entice, harbor,
13:41:05 25 transport, provide, obtain and maintain by many means, in or

1 affecting interstate commerce, persons, knowing and in
2 reckless disregard of the fact that means of force, threats
3 of force, fraud, coercion and any combination of such means
4 would be used to cause persons to engage in a criminal sex
13:41:28 5 act, and to knowingly recruit, entice, harbor, transport,
6 provide, obtain and maintain by any means, in or affecting
7 interstate and foreign commerce, a person, knowing and in
8 reckless disregard of the fact that the person had not
9 attained the age of 18 years and the person would be caused
13:41:49 10 to engage in a commercial sex act, in violation of Title 18,
11 United States Code, Section, 1591(a)(1), (b)(1) and (b)(2)
12 and knowingly and intentionally distributed, dispensed and
13 possessed with intent to distribute and dispense a mixture
14 and substance containing a detectable amount of heroin, a
13:42:14 15 Schedule I controlled substance and a mixture or substance
16 containing a detectable amount of cocaine, a Schedule II
17 controlled substance.

18 It was part of the conspiracy that Jeremy A. Mack
19 and his codefendant, Ashley M. Onysko, distributed a mixture
13:42:36 20 or substance containing detectable amount of heroin, a
21 Schedule I controlled substance and distributed a mixture or
22 substance containing a detectable amount of cocaine, a
23 Schedule II controlled substance to others who paid for the
24 drugs upon receipt and also to Victims 1, 2, 3 and 4 who
13:43:00 25 were not required to make simultaneous payments for the

1 drugs.

2 It was further part of the conspiracy that after
3 Victims 1, 2, 3 and 4 incurred drug debts, Jeremy Mack told
4 and caused others to tell Victims 1, 2, 3 and 4 that they
13:43:19 5 must engage in commercial sex acts and then provide all of
6 their earnings to Mr. Mack and Ms. Onysko to repay their
7 drug debts. And really, it was Mr. Mack who received the
8 monies and determined how the monies would be distributed
9 and applied.

13:43:47 10 It was further part of the conspiracy that
11 Mr. Mack and Ms. Onysko posted escort advertisements, which
12 included photographs of Victims 1, 2, 3 and 4 on an
13 commercial website, in this case, it was Backpage.com, an
14 interstate commercial website.

13:44:12 15 It was further part of the conspiracy that Jeremy
16 A. Mack and Ms. Onysko used and caused to be used force,
17 threats of force, fraud and coercion to compel Victims 1, 2,
18 3 and 4 to engage in commercial sex acts.

19 And as it pertains to these particular offenses
13:45:03 20 that the court summarized, that's Counts 1 through 7. A
21 very detailed count is set forth in the presentence report,
22 and again, of course there was a trial in this case. So the
23 court is not going to reiterate all the information
24 contained in the presentence report, but, again, will adopt
13:45:29 25 it, since there are no objections to the descriptions of the

1 offenses, nature and circumstances of the offenses.

2 Also, in addition to the conspiracy to commit sex
3 trafficking and drug trafficking, as well as the substantive
4 offenses of sex trafficking, and also the substantive
13:45:49 5 offenses of distribution of the drugs, heroin and cocaine,
6 there were two other offenses involved in this case and for
7 which the jury found Mr. Mack guilty and those were, of
8 course, the obstruction counts set forth in paragraphs -- in
9 Counts 8 and 9. And those are also touched upon in the
13:46:25 10 presentence report, particularly in paragraphs 51 and 52,
11 and the court will not further elaborate or summarize those
12 offenses but, again, since -- but, again, just adopt the
13 summaries as set forth in the report.

14 So with that, Counsel, I ask you if there are any
13:46:55 15 objections as to the nature and circumstances of the offense
16 as summarized and referenced by the court?

17 MS. BRENNAN: No, Your Honor. Thank you.

18 MR. WHITNEY: No, Your Honor.

19 THE COURT: So next is the history and
13:47:08 20 characteristics of the defendant and, of course, Mr. Whitney
21 had indicated that the court ought to take that into
22 consideration and that, in fact, is one of the factors that
23 the court must take into consideration in sentencing.

24 So, of course, the court has reviewed the
13:47:47 25 background information contained in the presentence report.

1 Mr. Mack is 38 years old, and as reflected in the report, it
2 does appear that he has -- that he was reared in a very
3 troubled and dysfunctional family environment. He is one of
4 four children, and his parents purportedly suffered from
13:48:26 5 alcohol and substance abuse issues during Mr. Mack's
6 formative years. He doesn't have a significant -- any
7 significant medical issues. He does have a substance abuse
8 history, which consists of marijuana and cocaine abuse
9 commencing from the time when he was 11 years old. At 11,
13:49:06 10 he started experimenting marijuana and later also used
11 cocaine.

12 Mr. Mack has never married but has fathered three
13 children. At least one of his children, Toby Lewis, was
14 involved in the offense, and the court found him to be a
13:49:34 15 participant in the offenses.

16 Mr. Mack has earned his GED and also completed
17 some occasional training while incarcerated previously. He
18 has no verifiable employment history. His criminal history
19 dates back to the age of eight. He has a number of felony
13:50:11 20 convictions related to drugs, firearms, escape and other
21 offenses again set forth in detail in the report, and as the
22 court previously found, he meets the criteria of being a
23 career offender.

24 So with that, any disagreement as to the history
13:50:36 25 and characteristics of the defendant as summarized and

1 recited by the court?

2 MS. BRENNAN: No, Your Honor.

3 MR. WHITNEY: No, Your Honor. Thank you.

4 THE COURT: So now the court has to determine the
13:50:51 5 sentence and the need for the sentence imposed in this case,
6 in both of these cases.

7 First, I want to make a brief comment relative to
8 the victim impact statements the court received. The court
9 received those relative to two victims. The victim impact
13:51:25 10 statements were not considered when the court calculated the
11 guideline sentence. The guideline sentence was based upon
12 the offenses in this case and the guideline criteria that
13 applied to the offenses and any increases relative to, for
14 instance, obstruction or the role -- that aggravated role
13:51:58 15 that Mr. Mack played in organizing his organization and
16 those who participated in his organization.

17 So victims do have a right to speak and be heard.
18 That's both by statute and by rule. But the guideline
19 sentence is a separate calculation. And relative to Victim
13:52:42 20 Number 4, which I think some of the discussion centered upon
21 her statement, the court did hear from other individuals,
22 the witnesses in this case who described the conditions at
23 the Tattersal house where the victims lived with Mr. Mack,
24 and so her experience isn't limited to how she viewed it,
13:53:27 25 but others corroborate things that she said in her letter.

1 And so I don't know that the debate is so much
2 regarding the types of things that happened to Victim 4, but
3 rather relative to perhaps degree. I'm not sure what the
4 debate is, because even the other witnesses testified to
13:54:03 5 some of the things that Victim 4 sets forth in her
6 statement.

7 Setting that all aside, the court is going to look
8 at all of the factors because it is the totality of the
9 factors that the court must consider in this case. And the
13:54:23 10 court has the benefit in this case of having heard the
11 testimony of witnesses who actually saw and observed the
12 conditions experienced by the victims when they were working
13 for Mr. Mack and his operation, so I just want to make that
14 point.

13:54:57 15 So by his conduct, looking at the entire picture,
16 Mr. Mack has repeatedly shown an utter disregard and
17 contempt for the laws and institutions of our society. He
18 has shown a disregard for the safety and for the well being
19 of others as demonstrated in his treatment, and I believe
13:55:44 20 the government termed "exploitation" of the victims in this
21 case.

22 At the relatively young age of 38, Mr. Mack has
23 amassed an extensive criminal record that includes violent
24 offenses. As I mentioned, his first of nine juvenile
13:56:15 25 adjudications occurred when he was eight years old. His

1 first adult conviction occurred when he was 18. He scores
2 as a Criminal History Category VI, without even considering
3 the two-level increase that the court applied because he was
4 on supervised release for his 2005 federal drug conspiracy
13:56:41 5 case.

6 He also qualifies separately as a career offender.
7 And his past convictions include, as I said before, several
8 drug trafficking offenses, drug possession, weapons
9 possession offenses, and even escape.

13:57:13 10 It is troubling to the court that Mr. Mack began
11 his criminal drug and sex trafficking operation that's the
12 subject of the present case within the month following his
13 release from the Bureau of Prisons for his drug conspiracy
14 conviction for which a 100-month sentence was imposed and
13:57:42 15 while he was just beginning his three-year period of
16 supervised release.

17 Perhaps even more troubling is how Mr. Mack went
18 about committing the instant offenses. He and his
19 codefendant, Ashley Onysko, recruited young, vulnerable
13:58:13 20 female victims, one of whom was a minor, to engage in
21 commercial sex acts through threats of force and coercion
22 and the coercion was unique in some respects. In this
23 regard, it was the testimony -- there was testimony of
24 threats of physical harm and in one instance of a body
13:58:55 25 cavity search of his victims when he thought someone had

1 taken money from him.

2 Another aspect of the coercion was to front his
3 victims with the drugs that they were addicted to, heroin
4 for three of them, cocaine for one, and withhold those drugs
13:59:20 5 from them until he permitted them to have them, which
6 usually required them to perform the commercial sex acts
7 that he required of them.

8 The court heard the testimony of witnesses who
9 described the physical and psychological effects of coming
13:59:52 10 off a heroin high and the intense craving and need and
11 desire to take more of the drug so that the severe and
12 painful and physical and emotional effects of the withdrawal
13 could be alleviated, and defense counsel is correct when he
14 says that the victims came with their drug problems, with
14:00:19 15 their drug addictions, but that's what made them so
16 vulnerable and so useful to Mr. Mack, and he seized upon
17 that vulnerability in this case to require them to work for
18 him in his operation. So it really wasn't a very fair
19 playing field when the victims were concerned. They had an
14:01:00 20 addiction. He recognized it, and he used it for his
21 purposes.

22 Based upon the testimony that the court heard,
23 it's clear that the drug and sex trafficking operation was
24 the brainchild of Mr. Mack, although Ms. Onysko was his
14:01:48 25 codefendant and worked with him to operate his business.

1 She took all of her direction from him. He supervised every
2 aspect of the operation, starting with the victims who were
3 selected to the amount they would charge for their services
4 or that would be charged for the services of the victims in
14:02:21 5 the commercial sex trafficking portion of the business. He
6 also determined when the victims would be given drugs, how
7 they would dress and look when they were on appointments,
8 how the money the victims earned by prostituting themselves
9 was divided between Mr. Mack and his codefendant, to how
14:02:49 10 much money was applied to the victim's drug debt.

11 He even instructed Ms. Onysko on how to keep
12 records regarding the monies that were in the operation. He
13 instructed the victims as to how to keep track of their drug
14 debt and to notify him of their drug debt. He really did
14:03:17 15 control the operation and the victims who participated in
16 the operation.

17 And if the court is recollecting some of these
18 text messages, some of them -- in some of them, the victims
19 express their fear of him, asking him not to be angry with
14:03:56 20 them for things they had done or hadn't done or weren't able
21 to do. They also recall -- I also recall seeing text
22 messages where they were begging Mr. Mack to provide them
23 with the drug because they were experiencing withdrawal, and
24 he withheld it until he was ready to give it to them and
14:04:33 25 until he determined that they should have it. So Mr. Mack

1 targeted on vulnerable victims, victims who had drug
2 problems and who he could manipulate psychologically.

3 As I said before, he was able to maintain his
4 control over his victims, both financial and psychological,
14:05:09 5 because of the way he fronted them with the drugs and
6 allowed them to really fall hopelessly into debt with him so
7 that to repay him, they were made to believe that they had
8 to perform the commercial sex acts. So it was a vicious,
9 never-ending cycle.

14:05:39 10 And defense counsel points out that some of these
11 victims were only with Mr. Mack for five weeks, three weeks,
12 ten weeks, and I believe the other was three and a half
13 weeks or three and a half months, but that's because -- and
14 we don't know really -- this story does have an ending for
14:06:07 15 the victims, because arrests were made. But had the arrests
16 not been made in this case, we don't know if it would have
17 gone beyond the three weeks, five weeks or ten weeks or if
18 the women would have survived beyond the five weeks or three
19 weeks or ten weeks, but it was a relatively short-lived
14:06:35 20 operation, if you will, because it was discovered thankfully
21 for the victims.

22 So another way he manipulated, Mr. Mack was able
23 to manipulate them is to tell them, this is particularly to
24 Number 4, he loved the victims, he would care for them, but
14:07:09 25 his form of care and concern for his victims was really all

1 about preserving them in order to accomplish his own goals
2 and to earn money for his operation. It was a very cruel
3 and callous sort of concern for his victims.

4 Mr. Mack also directed that the services be
14:07:46 5 advertised on the Internet. Again, he controlled the money
6 that the victims were paid. He took a portion off the top
7 as his cut. He applied a portion of it to his codefendant's
8 debt that she owed to him, and then applied the balance to
9 the drug debt owed by the victims.

14:08:12 10 Mr. Mack has not demonstrated at least to this
11 court any remorse for the harm that he caused to his
12 victims.

13 And while his own personal circumstances when he
14 was growing up might perhaps explain some of what haunts
14:08:40 15 Mr. Mack, it really does very little to ameliorate the
16 crimes to the fact that he had on others, particularly his
17 victims, and if truly that is all he knows, then that is a
18 very compelling reason to impose a substantial sentence in
19 this case, because if that is all he knows and all he will
14:09:13 20 ever do, then society must be protected.

21 So the guideline sentence in this case is life.
22 And that's a sentence that should never be imposed lightly.
23 And it should only be imposed after taking into
24 consideration all of the factors that the court is required
14:09:40 25 to consider.

1 It cannot be disputed that the offenses that
2 Mr. Mack committed were of a very serious nature. As I
3 said, he forced three adult women and one minor by preying
4 upon their vulnerabilities and specifically their drug
14:10:06 5 addictions and to committing these acts of prostitution. He
6 used them to serve him even to the point of requiring them
7 to perform duties at the house in which they lived with him.

8 He continued to commit crimes while he was being
9 held on these offenses and that he continued from the
14:10:33 10 holding facilities, CCA, to contact people, and it's from
11 that that the obstruction crimes were charged, from his
12 desire to even control people in his situation while even in
13 prison.

14 So given this sort of background, it's evident
14:11:17 15 that not even being incarcerated prevents Mr. Mack from
16 committing additional crimes, and his background indicates
17 that he will continue to re-offend and the court finds that
18 the public needs to be protected from Mr. Mack as he has
19 shown very little regard for our laws, for society, and in
14:11:48 20 this case, for his victims.

21 He's received multiple custody sentences for his
22 previous convictions, and yet, has failed to reform to any
23 degree or to make any positive life-style changes. His
24 conduct raises very significant concern for the safety of
14:12:11 25 the community.

1 We dwelled on the sex trafficking portion of his
2 crimes much today and didn't even talk about to any great
3 degree the drug trafficking, the fact that he was selling
4 drugs to others outside of the victims in this case. And
14:12:45 5 that in many cases, that is the only offense, and it's a
6 serious offense standing alone.

7 So the court finds that in this particular
8 instance, given the defendant's background, given the nature
9 and circumstances of the offense, given all of the factors
14:13:06 10 that the court is required to consider, particularly the
11 safety of the community, that and the need to protect the
12 public from further crimes from Mr. Mack, that the guideline
13 sentence is an appropriate sentence and is warranted in this
14 case to meet the purposes of sentencing under the sentencing
14:13:34 15 statutes.

16 Also such a sentence is also to achieve other
17 sentencing factors including just punishment, adequate
18 deterrence and to afford Mr. Mack treatment opportunities
19 while he's in custody. It seems like the only advances,
14:13:56 20 positive advances Mr. Mack has made were made when he was
21 incarcerated. That's when he obtained his GED. That's when
22 he obtained training. When he has been permitted to operate
23 in society, he resorts to what has been described as what he
24 knows. And that's what makes him dangerous.

14:14:34 25 So pursuant to the Sentencing Reform Act of 1984,

1 and Title 18, United States Code, Section 3553(a), it is the
2 judgment of the court that the defendant, Jeremy Mack, is
3 hereby committed to the custody of the Bureau of Prisons to
4 be imprisoned for a term of life on each of Counts 2, 3, 4,
14:15:11 5 and 5, a term of 60 months on Count 1, and a term of 240
6 months on each of Counts 6, 7, 8 and 9, all to be served
7 concurrently.

8 With respect to the supervised release violations,
9 the court has considered the sentencing factors as set forth
14:15:38 10 in the sentencing statute, as well as the nonbinding policy
11 statements in Chapter 7 of the guidelines in conjunction
12 with the record in this case.

13 Within one month of being released to a three-year
14 period of supervised release from a 100-month sentence,
14:16:07 15 Mr. Mack engaged in this very serious criminal activity. It
16 seems as though he had no regard for the fact that he was on
17 supervised release because he went full steam ahead in his
18 operation and this was beyond, I think, in the terms of
19 Chapter 7, a breach of trust.

14:16:44 20 When you're placed on supervised release, that's a
21 time when you're supposed to be integrating back into
22 society in a way you can become a productive member of
23 society. Instead, it appears as though Mr. Mack could
24 hardly wait to start his next criminal presentation and he
14:17:05 25 did. So the court will impose the guideline sentence in

1 that case of 24 months to run consecutive to his sentence in
2 this case.

3 The court will not impose supervised release
4 relative to the 2005 case, because the defendant will
14:17:37 5 have -- because of the nature of the sentence in the 2013
6 case.

7 I will pause for just a moment to ask Mr. Whitney
8 and Mr. Ray if there's a request for a particular
9 institution while I discuss the custody portion of the
14:18:02 10 sentence?

11 MR. WHITNEY: No, Your Honor.

12 THE COURT: All right. Upon release from
13 imprisonment, Mr. Mack shall be placed on supervised release
14 for a term of ten years. This term consists of three years
14:18:21 15 on each of Counts 1, 8 and 9, and a term of ten years on
16 each of Counts 2, 3, 4, 5 and 6 and 7, all such terms to run
17 concurrently.

18 Within 72 hours of release from the custody of the
19 Bureau of Prisons, Mr. Mack shall report in person to the
14:18:38 20 United States Probation Office in the sentencing district or
21 in the district in which he is released.

22 Mr. Mack shall pay a fine in full immediately in
23 the amount of \$5,000 through the clerk of the United States
24 District Court. This fine is due and payable immediately.

14:18:58 25 He shall pay 25 percent of his gross income per

1 month through the Federal Bureau of Prison's Financial
2 Responsibility Program. If restitution balance remains upon
3 release from imprisonment, payment is to commence no later
4 than 60 days following release from imprisonment to a term
14:19:15 5 of supervised release or at least a minimum of 10 percent of
6 Mr. Mack's gross monthly income during the term of
7 supervised release and thereafter as prescribed by law.

8 Notwithstanding establishment of a payment
9 schedule, nothing shall prohibit the United States from
14:19:30 10 executing or levying upon property of Mr. Mack discovered
11 before or after the date of this judgment.

12 Mr. Mack shall pay to the United States a special
13 assessment of \$900, which is due and payable immediately.

14 While on supervision, Mr. Mack shall not commit a
14:19:52 15 federal, state or local crime.

16 He shall not illegally possess a controlled
17 substance.

18 He shall comply with the standard conditions that
19 have been adopted by this court and shall comply with the
14:20:01 20 following additional conditions:

21 He shall refrain from any unlawful use of a
22 controlled substance, and submit to one drug test within 15
23 days of the commencement of supervision and to at least two
24 periodic drug tests thereafter as determined by his
14:20:14 25 probation officer.

1 He shall not possess a firearm, destructive device
2 or any dangerous weapon.

3 He shall participate in an approved program of
4 substance abuse testing and/or outpatient or inpatient
14:20:25 5 substance abuse treatment as directed by his supervising
6 officer and abide by the rules of the treatment program. He
7 shall not obstruct or attempt to obstruct or tamper in any
8 fashion with the prohibitive substance testing. He shall
9 undergo a mental health evaluation and/or participate in a
14:20:42 10 mental health treatment program as directed by his
11 supervising officer.

12 He shall participate in the cognitive behavioral
13 treatment program as instructed by his probation officer.

14 He shall cooperate in the collection of DNA as
14:21:00 15 directed by his probation officer.

16 He shall submit his person, residence, place of
17 business, computer or vehicle to a warrantless search
18 conducted and controlled by the probation office at a
19 reasonable time and in a reasonable manner based upon
14:21:14 20 reasonable suspicion of contraband or evidence of a
21 violation of a condition of release. Failure to submit to a
22 search may be grounds for revocation. Mr. Mack shall inform
23 any other residents that the premises may be subject to a
24 search pursuant to this condition.

14:21:28 25 Mr. Mack is required, pursuant to Title 18, United

1 States Code, Section 3583 to register under the Sex Offender
2 Registration and Notification Act and must comply with the
3 requirements of the act as directed by his probation
4 officer.

14:21:46 5 Pursuant to the Adam Walsh Child Protection Act of
6 2006, Mr. Mack will keep his registration current in each
7 jurisdiction in which he resides, is employed or is a
8 student.

9 Mr. Mack shall no later than three business days
14:22:00 10 after each change in name, residence, employment or student
11 status appear in person in at least one jurisdiction in
12 which he is registered and inform that jurisdiction of all
13 changes and reporting information. Failure to do so may be
14 a violation of his conditions of supervised release and may
14:22:17 15 be a new federal offense punishable by up to ten years.

16 Mr. Mack will abide by all rules of the Minor
17 Protection Restriction Program of the United States Pretrial
18 Services and Probation Office.

19 He shall submit to a mental health evaluation and
14:22:38 20 sex offender assessment as directed by his probation
21 officer. He shall participate in any treatment program,
22 including programs for sexual deviancy, which may include
23 polygraph testing if recommended by the -- these
24 evaluations.

14:22:54 25 He shall submit to periodic polygraph testing as

1 directed by his probation officer. No violation proceedings
2 will be based solely on the results of a polygraph
3 examination or a valid Fifth Amendment refusal to answer a
4 polygraph question.

14:23:09 5 He is prohibited from accessing any on-line
6 computer service at any location, including employment or
7 education, without written approval of his probation officer
8 or the court. This includes any Internet service provider,
9 bulletin board system or any other public or private
14:23:32 10 computer network. Any approval must be -- or shall be
11 subject to conditions set by his probation officer or the
12 court with respect to any such approval.

13 Mr. Mack shall consent to the probation office
14 conducting periodic, unannounced examinations of his
14:23:49 15 computer systems, which may include retrieval and copying of
16 all memory from hardware, software and/or removal of such
17 systems for the purpose of conducting a more thorough
18 inspection and will consent to having installed on his
19 computer at his expense any hardware, software to monitor
14:24:07 20 his computer or use or prevent access to particular
21 materials. He shall consent to periodic inspection of any
22 such installed hardware and software to insure that it is
23 functioning properly.

24 Mr. Mack shall provide his probation officer with
14:24:27 25 accurate information about his entire computer system,

1 hardware and software, all passwords used by him and his
2 Internet service providers and shall abide by all rules of
3 the computer restriction and monitoring program.

4 He shall submit his person, residence, place of
14:24:46 5 business, computer and/or vehicle, I believe I said this
6 before, but I'm going to repeat it, to a warrantless search
7 conducted and controlled by his probation officer at a
8 reasonable time and in a reasonable manner based upon
9 reasonable suspicion of contraband or evidence of a
14:25:00 10 violation of a condition of release. Failure to submit to
11 the search may be grounds for revocation. He shall inform
12 any other residents that the premises and his computer may
13 be subject to a search pursuant to this condition.

14 So with that, Counsel, do you have any objections
14:25:31 15 or know of any reason why the sentence as stated by the
16 court should not be imposed?

17 MS. BRENNAN: Nothing on behalf of the government,
18 Your Honor. No objection.

19 THE COURT: Thank you.

14:26:08 20 MR. WHITNEY: Your Honor, other than what we put
21 on the record so far, we have no further objection.

22 THE COURT: Very well. Thank you, Mr. Whitney and
23 Mr. Ray.

24 Mr. Mack, the court hereby advises you that you
14:26:21 25 have the right to appeal your conviction and sentence in

1 this case. If you do not have enough funds to allow you to
2 take an appeal, you have the right to have someone appointed
3 to represent you in prosecuting an appeal, and you would
4 have the right to appeal without cost to you. Also you have
14:26:34 5 the right to apply for leave to appeal in forma pauperis.
6 In that event, the clerk of court will prepare and file a
7 notice of appeal upon your request.

8 Be advised that with a few exceptions, any notice
9 of appeal must be filed within 14 days of the entry of this
14:26:47 10 court's judgment.

11 Do you understand all that I've said relative to
12 your right to appeal, sir?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. And, Counsel, relative to
14:27:02 15 your representation of --

16 MR. WHITNEY: Your Honor, we believe --

17 THE COURT: -- Mr. Mack, on any --

18 MR. WHITNEY: We believe -- thank you. We believe
19 that the defendant ought to have other counsel look at
14:27:15 20 obviously what occurred during the trial, but we will, if
21 the court wishes us, to see to it that the notice of appeal
22 is filed.

23 THE COURT: All right. Since you're basically
24 asking for new counsel to be appointed for Mr. Mack for
14:27:26 25 purposes of any appeal that you may wish to file, the court

1 will within the next day select someone so that they can in
2 turn file a notice.

3 Is that your desire, Mr. Mack?

4 THE DEFENDANT: Yes, Your Honor.

14:27:40 5 THE COURT: All right. Then I will proceed
6 accordingly.

7 MR. WHITNEY: So we will not be responsible for
8 filing a notice of appeal?

9 THE COURT: No. You will be notified tomorrow,
14:27:51 10 possibly today, the name of that counsel so counsel can then
11 interact with Mr. Mack and you.

12 All right. With that, is there anything further
13 to address with the court?

14 MS. BRENNAN: No, Your Honor. Thank you.

14:28:04 15 MR. WHITNEY: No, Your Honor. Thank you.

16 THE COURT: That completes this proceeding. And
17 Mr. Mack is remanded to the custody of the marshals so that
18 he may be transferred to an appropriate institution so that
19 he may serve his sentence in this case.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

s/Lori A. Callahan
Lori Ann Callahan, RMR-CRR
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